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The **NORTH CAROLINA REGISTER**

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Volume 2 • Issue 1 • Pages 1-137



NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

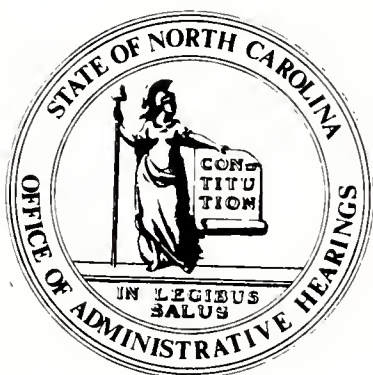
CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

North Carolina Register. Published monthly by the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions ninety-five dollars (\$95.00) per year.

North Carolina Administrative Code. Published in March and October by the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions forty dollars (\$40.00) per edition.

NORTH CAROLINA REGISTER



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Publication Deadlines and Schedules
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Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****	*****
04/15/87	03/26/87	04/02/87	05/15/87	06/14/87	09/01/87
05/15/87	04/27/87	05/04/87	06/14/87	07/14/87	10/01/87
06/15/87	05/26/87	06/02/87	07/15/87	08/14/87	11/01/87
07/15/87	06/25/87	07/02/87	08/14/87	09/13/87	12/01/87
08/14/87	07/27/87	08/03/87	09/13/87	10/13/87	01/01/88
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12/15/87	11/23/87	12/02/87	01/14/88	02/13/88	05/01/88
01/15/88	12/28/87	01/04/88	02/14/88	03/15/88	06/01/88
02/15/88	01/26/88	02/02/88	03/16/88	04/15/88	07/01/88
03/15/88	02/24/88	03/02/88	04/14/88	05/14/88	08/01/88

* The "Earliest Effective Date" is computed assuming that the agency files the rules with The Administrative Rules Review Commission the same calendar month as adoption by the agency and ARRC approves the rules at the next calendar month meeting.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 34

GOVERNOR'S PROGRAM TO ENCOURAGE BUSINESS ENTERPRISES OWNED BY MINORITY, WOMEN AND DISABLED PERSONS

It is my policy that the State of North Carolina shall enhance and promote economic opportunities for all of its citizens without regard to race, gender or handicap.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. Establishment

(A) There is hereby established the Governor's Program to Encourage Business Enterprises Owned by Minority, Women and Disabled Persons.

(B) The Program shall be coordinated by the Governor's Director of Minority Affairs and administered by the Division of Purchase and Contract of the Department of Administration.

(C) The purposes of the Program are to enhance and promote economic opportunities for all of its citizens without regard to race, gender or handicap by:

- (1) increasing the amount of goods and services acquired by the State from businesses owned by minorities, women and disabled persons;
- (2) ensuring the absence of barriers that reduce participation of minorities, women and disabled persons in the State's purchasing process;
- (3) encouraging the State's purchasing officers to identify prospective minorities, women and disabled vendors and service providers;
- (4) promoting awareness among minorities, women and disabled persons of opportunities to do business with State government.

(D) The Program objective for fiscal 1986-87 is for business owned by minorities, women and disabled persons to receive a minimum of four percent of the State's contract purchases. By order of the Governor, this percentage may be increased on an annual basis.

Section 2. Administration

(A) The Secretary of Administration shall provide assistance on a project basis to the Director of Minority Affairs.

(B) The Division of Purchase and Contract, Department of Administration shall assist each department in developing a plan and provide technical assistance to reach the set objectives.

(C) Each Department Head shall designate from the existing purchasing staff of such Department a coordinator for the Program. The name of said designee shall be forwarded to the Director of Minority Affairs.

(D) The Minority Business Development Agency, Small Business Division of the Department of Commerce shall continue to certify that business enterprises owned by minorities, women and disabled persons are in fact owned by those classified entrepreneurs. This agency shall also provide technical assistance to businesses interested in the Program.

(E) The Division of Purchase and Contract shall prepare and make available a directory of business enterprises owned by minorities, women and disabled persons firms to departmental personnel to facilitate the accomplishment of the Program.

Section 3. Reporting and Evaluation

(A) The Director of Minority Affairs shall monitor and evaluate the Program and report on a quarterly basis to Department Heads. The Director shall also conduct review meetings with all coordinating agencies and Department Heads on an as needed basis.

(B) The Division of Purchase and Contract shall report purchases and contract opportunities and purchase and contract awards on a

monthly basis to the Director of Minority Affairs.

Section 4. Prior Orders

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed.

This Order is effective the 27th day of February, 1987.

EXECUTIVE ORDER NUMBER 35

**TRANSFERRING THE STATE
INFORMATION PROCESSING
SERVICES (SIPS) TO THE
OFFICE OF THE STATE
CONTROLLER**

Article III, Section 5(10) of the constitution of North Carolina authorizes and empowers the Governor to make such changes in the allocation of offices and agencies and in the allocation of those functions, powers and duties as he considers necessary for efficient administration of State Government. N.C.G.S. 143B-12 authorizes and empowers the Governor to assign or reassign the duties and functions of the Executive Branch among the principal State Departments. The State Information Processing Services (SIPS), a Section of the Division of Governmental Operations of the Department of Administration created to provide those information processing services listed in N.C.G.S. 143-341(9), the telecommunication services listed in N.C.G.S. 143-340(14), and other related services to State Government, and to act as the staff of the Computer Commission established pursuant to N.C.G.S. 143B-426.21, is currently under the supervision and control of the Secretary of the Department of Administration.

NOW, THEREFORE, IT IS ORDERED:

Section 1. SUPERVISION

The functions and powers of the Secretary of the Department of Administration relating to the administration of the State Information Processing Services (SIPS) are hereby transferred to the State Controller. These functions, powers and duties include but are

not limited to the authority to carry out the provisions of N.C.G.S. 143-341(9), 143-340(14), the staff and services provisions of 143B-426.21, and any other duties that are currently or that may in the future be assigned to the State Information Processing Services (SIPS), either by statute or by agreement among the various State Departments, Commissions or other entities of State Government.

Section 2. EMPLOYEES

State employees currently employed by the State Information Processing Services (SIPS) who are under the supervision of the Department of Administration are hereby transferred to the supervision of the Office of the State Controller. Personnel transfers pursuant to this Order shall not affect an employee's pay grade, vacation leave, sick leave, retirement, or longevity.

This Executive Order is effective March 4, 1987, and shall remain effective unless rescinded by further Executive Order.

This the 4th day of March, 1987.

EXECUTIVE ORDER NUMBER 36

**GOVERNOR'S TASK FORCE
ON THE FARM ECONOMY IN
NORTH CAROLINA AND GOVERNOR'S
ADVISORY COMMITTEE ON
AGRICULTURAL PARKS**

By authority vested in me as Governor by the Constitution and Laws of North Carolina, it is ORDERED:

Section 1. There is hereby established the Governor's Task Force on The Farm Economy in North Carolina.

Section 2. The Governor shall appoint at least thirty (30) persons as members of the Task Force. Members shall include representatives from the various areas of North Carolina in order that all rural regions of the State shall be represented. Members shall include representatives from:

A. Farmers engaged in the various aspects of farming practiced in North Carolina;

B. Food processors including seafood processors;

C. Wholesale and retail vendors of food in North Carolina.

D. Bankers; and

E. Representatives from colleges and universities involved in rural economic development.

In addition to those representatives set forth above, the following State agencies shall be represented by one or more members who shall serve as ex-officio advisors to the Task Force, as designated by the Governor: Department of Commerce, Department of Transportation, Department of Natural Resources and Community Development, State Budget Office, and Employment Security Commission.

The Governor shall designate the Chairman of the Task Force and all members shall serve at the pleasure of the Governor.

Section 3. The Task Force shall meet in Raleigh monthly or more often as directed by the Chairman. The Chairman is authorized to convene meetings or conduct hearings outside of Raleigh where he deems appropriate.

Section 4. The Task Force shall have the following responsibilities:

A. Assess immediate problems facing the farm economy in North Carolina and develop proposals for immediate action to solve those problems.

B. After consultation with the Governor's Advisory Committee on Agricultural Parks, make recommendations to the Governor for the development of agricultural parks in all sections of North Carolina.

C. Develop a comprehensive strategy to further the development of food processing in North Carolina.

D. Review and make recommendations to coordinate State agencies' activities with local rural leaders in improving the farm economy in North Carolina.

Section 5. There is hereby established a Governor's Advisory Committee on Agricultural Parks.

Section 6. The Governor shall appoint at least seven (7) persons as members of the Committee. The

Governor shall designate the Chairman of the Committee; all members shall serve at the pleasure of the Governor.

Section 7. The Advisory Committee shall meet monthly in Raleigh or more often as directed by the Chairman. The Chairman may convene meetings or conduct hearings outside of Raleigh when he deems appropriate.

Section 8. The Committee shall study the feasibility of developing agricultural parks in all sections of North Carolina and present its findings to the Governor's Task Force on The Farm Economy in North Carolina.

Section 9. The Department of Commerce shall provide necessary staffing and administrative support for the Task Force and the Advisory Committee, including per diem travel and subsistence for members of the Task Force and the Advisory Committee. Other State departments and agencies shall assist the Task Force in its undertakings by rendering such technical advice and assistance to it as from time to time is requested.

Section 10. Members of the Task Force and Advisory Committee shall be entitled to such per diem and reimbursement for travel and subsistence expense as may be authorized for members of state boards and commissions generally.

Section 11. This Order shall become effective immediately and shall remain in effect until terminated by further Executive Order.

Done in Raleigh, North Carolina,
this 6th day of March, 1987.

EXECUTIVE ORDER NUMBER 37

NORTH CAROLINA RESPONSE
TO AND MANAGEMENT OF
FEDERAL RESTRICTIONS ON
PRIVATE ACTIVITY BONDS
AND LOW-INCOME HOUSING
TAX CREDITS

As Governor of North Carolina it has been made to appear to me upon satisfactory information furnished to me as follows:

1. The Tax Reform Act of 1984 established a federal

volume limitation on the aggregate amount of "private activity bonds" that may be issued by each state. The interest on private activity bonds is exempt from federal income taxation.

2. Pursuant to Section 103(n) of the Internal Revenue Code of 1954 as amended, a previous Governor of North Carolina issued Executive Order 113 proclaiming a formula for allocating the federal volume limitation for North Carolina.

3. On October 22, 1986, the Tax Reform Act of 1986, hereinafter referred to as the "Act" was enacted.

4. The Act establishes (a) a new unified volume limitation for private activity bonds on a state by state basis, (b) a new definition of the types of private activity bonds to be included under those new limitations, (c) a new low-income housing credit to induce the construction of and the improvement of housing for low-income people, and (d) limits the aggregate use of this low-income housing credit on a state by state basis.

5. The Act provides for federal formulas for the allocation of these "state by state" resources, and also provides that individual states may, within certain limitations, provide different allocation formulas.

6. The Act gives interim authority for the Governor of each state to formulate and execute plans for allocation.

7. Section 146 of the Internal Revenue Code of 1986, as amended, and Section 42 of the Internal Revenue Code of 1986 as amended will require continued inquiry and study in the ways in which North Carolina can best and most fairly manage and utilize resources provided therein.

NOW, IT IS THEREFORE

ORDERED, pursuant to the authority vested in me by the laws and the Constitution of North Carolina:

Section 1. ESTABLISHMENT.

The North Carolina Federal Tax Reform Allocation Committee, hereinafter referred to as the "Committee", is hereby established. The Committee is a continuation of the Interim Private Activity Bond Allocation Committee established under Executive Order 28 and amended under Executive Order 31. The Secretary of the Department of Commerce, the Executive Assistant to the Governor for Budget and Management and the State Treasurer shall constitute the membership of this Committee. The Secretary of the Department of Commerce shall serve as Chairman of the Committee.

Section 2. DUTIES.

The Committee shall have the following duties:

A. Manage the allocation of tax exempt private activity bonds and low-income housing credits and receive advice from bond issuers, elected officials, and the General Assembly.

B. Continue to monitor bond markets, economic development financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens, and

C. Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds and low income housing credits.

D. Report to the Governor, Lieutenant Governor and the Speaker of the House of the General Assembly as requested and on not less than an annual basis.

E. Make the State Certification as described in Section 149(e) of the Internal Revenue Code of 1986, as amended, and may designate an individual to make this certification.

Section 3. ALLOCATION.

To provide for the orderly and prompt issuance of private activity bonds and the use of low income housing credits there are hereby proclaimed formulas for allocating the unified volume limitation and

the state housing credit ceiling. The unified volume limitation and the state housing credit ceiling each shall be considered as a single resource to be allocated under this Executive Order. The Committee shall issue allocations of the unified volume limitation and shall issue allocations of the state housing credit ceiling. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development and general prosperity of the people of North Carolina.

Section 4. EFFECTIVE DATE AND EXPIRATION DATE.

This Executive Order shall become effective immediately and will expire February 1, 1989.

This the 13th day of March, 1987.

EXECUTIVE ORDER NUMBER 38

AMENDMENT TO EXECUTIVE ORDER NUMBER 32

By authority vested in me as Governor by the Constitution and laws of North Carolina, it is ordered:

Section 1. The Governor's Literacy Council was established pursuant to Executive Order Number 32, on the 16th day of February, 1987.

Section 2. The Title of the Council formed by Executive Order 32 is hereby changed to the Governor's Commission on Literacy.

Section 3. All other sections and provisions of Executive Order 32 shall remain in effect.

This order is effective this 12th day of March, 1987.

EXECUTIVE ORDER NUMBER 39

BOARD OF TRUSTEES OF THE NORTH CAROLINA PUBLIC EMPLOYEE DEFERRED COMPENSATION PLAN

Executive Order Number 109, executed on July 31, 1984, expired on July 30, 1986, in accordance with

N.C.G.S. 147-16.2. This Executive Order established the Board of Trustees of the North Carolina Deferred Compensation Plan and the guidelines under which the plan was to be administered. The Deferred Compensation Program is an important part of the financial planning and security of the public employees of the State of North Carolina.

NOW, THEREFOR, IT IS
HEREBY ORDERED:

Section 1. ESTABLISHMENT.

Pursuant to NCGS 143b-426.24, there is hereby established a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which shall assume all authority, responsibilities and functions of the Board established on July 31, 1984, by Executive Order Number 109.

Section 2. MEMBERSHIP AND FUNCTIONS.

The membership of the Board and its duties shall be as provided in N.C.G.S. 143B-426.24. The terms of the members shall be as provided in N.C.G.S. 143B-426.24. The Secretary of Administration shall supply the Board with all administrative, legal, financial and personnel services that may be required by the Board. Guidelines for the funding for these services will be supplied by the Secretary of Administration as provided in N.C.G.S. 143B-426.24(1) and (m).

This Order shall be effective .
immediately.

Done in Raleigh, North Carolina,
this the 16th day of March, 1987.

EXECUTIVE ORDER NUMBER 40

GOVERNOR'S COMMISSION FOR THE FAMILY

The foundation of our great State is in jeopardy because of increasing threats to the family unit related to social, economic, health, stress and other factors.

The State of North Carolina must carefully consider ways government policies contribute to the problems which cause the weakening and

break-up of the traditional family unit, in addition to promoting positive means of strengthening our nation's families.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ordered:

Section 1. ESTABLISHMENT

The Governor's Commission For the Family is hereby established. The Commission shall be composed of at least twenty and not more than thirty members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chairman and one as Vice-Chairman. The Secretaries of the Departments of Human Resources, Natural Resources and Community Development, Administration, Crime Control and Public Safety, and Cultural Resources shall be ex-officio members. The members appointed by the Governor shall be representatives from the following areas:

- (1) Private business and community leaders;
- (2) Law Enforcement;
- (3) At least one representative of the North Carolina Fund for Children and Families Commission;
- (4) Judicial System; and
- (5) Volunteers who have exhibited an interest in family issues.

Section 2. FUNCTIONS

- (1) The Commission shall meet regularly at the call of the chairman or the Governor. The Commission is authorized to conduct public hearings if it deems them to be necessary.
- (2) The Commission shall have the following duties:
 - (a) Heighten public awareness of the need to strengthen families at the community level by involving civic, cultural, religious, and governmental leaders;
 - (b) Work with other groups interested in reducing economic stress for families;

- (c) Review state laws, policies, and programs which have impact on families;

- (d) Foster neighborhood development supportive of families (e.g. community-wide after-school and summer cultural recreational and sports programs, using public/private partnership approach);

- (e) Advocate for education and support programs for all first-time parents and for families under stress because of disabilities and illnesses affecting family members;

- (f) Advocate for workplace programs and policies supportive of families;

- (g) Encourage private sector involvement and help to coordinate private groups and business activity in various areas identified as needs in today's society;

- (h) Consider new prevention, intervention, and treatment programs designed to assist families, including health and safety issues;

- (i) Review existing family strengthening activities within and outside North Carolina;

- (j) Encourage the enforcement and further development of laws affecting abuse of children, spouses, and senior citizens;

- (k) Coordinate the implementations of the recommendations of the Governor's Commission on Child Victimization;

- (l) Work closely with the Judicial Coordinating Councils;

- (m) Advocate for more adequate training about the prevention of family violence among professions in human services, law enforcement, and the judiciary;

- (n) Encourage the use of volunteers in all programs involving families; and

- (o) Work with the North Carolina Fund for Children and Families Commission.

Section 3. ADMINISTRATION

In support of the Commission,

a staff of three will be created:

(1) An Executive Director, Deputy Director, and Administrative Secretary shall be appointed by the Secretary of the Department of Human Resources and serve at his pleasure. Funds shall be authorized and made available by the Department of Human Resources with possible assistance from other departments.

(2) Members of the Commission may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Department of Human Resources.

Section 4. IMPLEMENTATION AND DURATION

(1) This order shall be effective immediately.

(2) The Commission shall dissolve at the pleasure of the Governor, but no later than September 30, 1988.

Done in Raleigh, North Carolina,
this 16th day of March, 1987.

EXECUTIVE ORDER NUMBER 41

GOVERNOR'S TASK FORCE ON DEVELOPMENT OF PRIVATE SEED VENTURE CAPITAL SOURCES

By authority vested in me as Governor by the Constitution and laws of North Carolina it is ordered:

Section 1. ESTABLISHMENT

(a) There is hereby established the Governor's Task Force on the Development of Private Seed Venture Capital Sources.

(b) The Task Force shall consist of not less than twelve members who shall be appointed by the Governor. The Governor shall designate the chairman of the Task Force and all Task Force members shall serve at the pleasure of the Governor.

(c) Persons appointed shall be citizens who have demonstrated interest, involvement, or expertise in development of sources of venture capital.

Section 2. FUNCTIONS

(a) The Task Force is authorized to meeting regularly at the call of the chairman, the Governor, or the Secretary of the Department of Commerce.

(b) The Task Force shall have the following duties:

1. Determine the necessary steps to encourage development in North Carolina of a private seed venture capital fund, including any legislative changes.

2. Review and recommend mechanisms for coordination of available sources of private seed venture capital with identified needs for private seed venture capital.

3. Such other duties as may be assigned by the Governor or the Secretary of the Department of Commerce.

Section 3. ADMINISTRATION

(a) Heads of the State Departments and Agencies shall, to the extent permitted by law, provide the Task Force information as may be required by the Task Force in carrying out the purpose of this order.

(b) The Department of Commerce shall provide staff and support services as directed by the Secretary of the Department of Commerce.

(c) Members of the Task Force shall serve without compensation, but may receive reimbursement contingent on the availability of funds for travel and subsistence expenses in accordance with state guidelines and procedures.

Section 4. REPORTS

The Task Force shall present a report of recommendations to encourage development of a private seed venture capital fund to the Governor and the Secretary of the Department of Commerce by not later than the 1st day of September, 1987.

Section 5. PRIOR ORDERS

All prior executive orders or portions of prior executive orders inconsistent herewith are hereby repealed.

This order is effective this the 20th day of March, 1987.

EXECUTIVE ORDER NUMBER 42

STATE BUILDING COMMISSION

By the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

(a) A State Building Commission is created within the Department of Administration to assist the Secretary of Administration in developing procedures to guide the State's capital facilities development and management program.

(b) The Commission shall consist of twelve members appointed by the Governor and qualified as follows:

(1) The Secretary of the Department of Administration who shall serve as Chairman.

(2) The State Budget Officer.

(3) A licensed architect whose primary practice is in the design of buildings.

(4) A registered engineer whose primary practice is in the design of engineered systems for buildings.

(5) A licensed building contractor whose primary business is in the construction of buildings.

(6) A licensed electrical contractor whose primary business is in the installation of electrical systems for buildings.

(7) A licensed real estate broker, or other person, whose primary business is in property and facilities management.

(8) A licensed mechanical contractor whose primary business is in the installation of mechanical systems for buildings.

(9) A manager of physical plant operations whose responsibilities are in the operations and maintenance of physical facilities.

(10) A certified planner whose primary practice is in urban design and land use planning.

(11) A public member who is knowledgeable in building construction or building maintenance.

(12) The Chairman of the Capital Building Authority.

In appointing members (3) through (10) the Governor shall seek and consider nominations from the professional associations, councils or institutes representing the various disciplines or professions.

The terms of the Secretary of the Department of Administration and the State Budget Officer shall be coterminous with their terms of office. The other 10 members shall be appointed for staggered two-year terms: Provided, however, the initial terms of members appointed pursuant to subdivisions (3), (5), (7), (9) and (11) shall expire June 30, 1990, and the initial terms of members appointed pursuant to (4), (6), (8), (10) and (12) shall expire June 30, 1989. Members may serve no more than six consecutive years.

Vacancies in appointments shall be filled by the Governor for the remainder of any unexpired terms. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

(c) The Commission shall meet at least four times a year on or about January 15, April 15, July 15 and October 15, and upon the call of the chairman.

(d) Members of the Commission shall be reimbursed for travel and subsistence as provided in G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence as provided in G.S. 138-6.

(e) The State Building Commission shall have the following duties:

(1) To assist the Office of State Construction in developing an inventory of the State's buildings and their current conditions, identify future building needs and develop a statewide building and maintenance program to meet the current and future needs of the State and its agencies and institutions.

(2) To propose procedures to the Secretary of the Department of Administration for evaluating the work performed by designers and contractors on

State capital improvement projects.

(3) To provide advice and assistance to the Capital Building Authority in establishing and implementing procedures and criteria for the selection of designers based on qualifications and experience to be applicable to all capital improvement projects.

(4) To propose rules to the Secretary of the Department of Administration for coordinating the plan review, approval and permit process for State capital improvement projects.

(5) To propose rules to the Secretary of the Department of Administration for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.

(6) To study and recommend ways to the Secretary of the Department of Administration to improve the effectiveness and efficiency for the planning, design, construction and operation of State facilities and acquisition, allocation,

disposition and management of State-owned properties.

(7) To perform any other duties that may be assigned by the Governor.

(f) As used herein, "State Capital improvement project" means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143-1, are used and which is required by G.S. 143-129 to be publicly advertised.

(g) The Office of State Construction of the Department of Administration shall provide staff assistance to the State Building Commission.

(h) The Director of the Office of State Construction shall be a registered engineer or licensed architect appointed by the Secretary of the Department of Administration who is technically qualified by educational background and professional experience in building design, construction, or facilities management.

Done March 23, 1987.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:TGL:jmc
DJ 166-012-3
R6925-6926
R7953

March 10, 1987

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the increase in the length of terms from two to four years, the staggering of terms, and a change in the method of filling vacancies for the Town of Enfield in Halifax County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on January 9, 1987; supplemental information was received on February 24, 1987.

The Attorney General does not interpose any objections to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See Section 51.41 of the Procedures for the Administration of Section 5 [52 Fed. Reg. 496 (1987)]

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

U. S. Department of Justice
Washington, D.C. 20530

WBR:SSC:KIF:gmh
DJ 166-012-3
R8220

March 25, 1987

Robert C. Cogswell, Jr., Esq.
City Attorney
P. O. Box 1513
Fayetteville, North Carolina 28302

Dear Mr. Cogswell:

This refers to the November 4, 1986, bond election for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 16, 1987. In accordance with your request, expedited consideration has been given this submission pursuant to Section 51.34 of the Procedures for the Administration of Section 5 [(52 Fed. Reg. 495 (1987))].

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also Sections 51.41 and 51.43 [(52 Fed. Reg. 496 (1987))].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:ST:gmh
DJ 166-012-3
R6231

March 16, 1987

Jesse L. Warren, Esq.
City Attorney
Drawer W-2
Greensboro, North Carolina 27402

Dear Mr. Warren:

This refers to the January 5, 1987, annexation to the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 16, 1987.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See Section 51.41 of the Procedures for the Administration of Section 5 [(52 Fed. Reg. 496 (1987))].

Future submissions under Section 5 should be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Submission under Section 5 of the Voting Rights Act. See also Section 51.24 [(52 Fed. Reg. 493 (1987))].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

PROPOSED RULES

TITLE 1 - ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend regulation cited as 1 NCAC 35 .0406.

The proposed effective date of this action is August 1, 1987.

The public hearing will be conducted at 2:00 p.m. on May 21, 1987 at Advisory Budget Commission Conference Room, Administration Building, Fifth Floor, 116 West Jones Street, Raleigh, North Carolina 27611.

Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 W. Jones Street, Raleigh, N.C. 27611, (919) 733-7232.

CHAPTER 35 - STATE EMPLOYEES COMBINED CAMPAIGN

SECTION .0400 - GENERAL PROVISIONS

.0406 DISTRIBUTION OF UNDESIGNATED FUNDS

(a) For the 1984 Campaign, in the event that an employee does not designate which agency or group of agencies should benefit, then the funds will be divided between the United Way and NHA according to a formula mutually agreed upon by those agencies and approved by the Statewide Campaign Advisory Committee.

Note: It is the express intent of the department to utilize this approach only for the 1984 campaign because there is insufficient statewide experience to use as a basis for distributing undesignated pledges among participatory

agencies other than United Way and NHA and because any participating agencies would have insufficient experience in combined campaign process.

(b) After 1984, each local campaign manager will distribute undesignated funds in the same proportion as employees designated funds for approved participatory agencies.

All contributions made through the S.E.C.C. shall be designated to a particular recipient. Any monies not specifically designated to a particular recipient shall be deemed designated to the proper county/local S.E.C.C. committee for distribution.

Statutory Authority G.S. 143B-10; 147-62.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Plant Conservation Board intends to amend regulations cited as 2 NCAC 10G .0301 and .0302.

The proposed effective date of this action is September 1, 1987.

The public hearing will be conducted at 9:00 a.m. on June 26, 1987 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, NC.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to Rob Sutter, N.C. Plant Conservation Board, P.O. Box 27647, Raleigh, North Carolina, 27611.

CHAPTER 10 - PESTICIDE AND PLANT PROTECTION

SUBCHAPTER 10G - PLANT INDUSTRY

SECTION .0300 - ENDANGERED PLANT SPECIES LIST: THREATENED PLANT SPECIES LIST: LIST OF SPECIES OF SPECIAL CONCERN

.0301 ENDANGERED PLANT

PROPOSED RULES

SPECIES LIST

As authorized by G.S. 106-202.12 through 106-202.19 of the Plant Protection and Conservation Act of 1979, the North Carolina Plant Conservation Board hereby establishes the following list of endangered plant species:

- (6) Bryocrumia andersonii --
(Bartr.) Anders. Gorge moss;
- (9) Carex biltmoreana --
MacKenzie Biltmore Sedge;
- (10) Carex barrattii --
Schweinitz and Torrey Barratts Sedge;
- (11) Coreopsis latifolia --
Michaux Broadleaf Coreopsis;
- (28) Lindera subcoreacea --
Wofford Bob Spice Bush;
- (31) Orthotrichum keeverae --
Crum & Anders. Keever's bristle moss;
- (32) Oxypolis canbyi --
(Coult. & Rose) Fern. Canby's cowbane;
- (39) Sabatia kennedyana --
Fern. Sea Pink;
- (42) Sarracenia oreophila --
(Kearney) Wherry Green Pitcher Plant;

Statutory Authority G.S. 106-202.12 through 106-202.19.

.0302 THREATENED PLANT SPECIES LIST

As authorized by G.S. 106-202.12 through 106-202.19 of the Plant Protection and Conservation Act of 1979, the North Carolina Plant Conservation Board hereby establishes the following list of threatened plant species:

- (1) Amaranthus pumilus -- Raf.
Seabeach Amaranth;
- (6) Carex conoidea -- Willd.
Cone-shaped Sedge;
- (9) Coreopsis latifolia -- Michaux
Broad-leaved Tickseed;
- (12) Fimbristylis perpusilla --
Auth.
- (29) Schlotheimia lancifolia --
Bartr. Highlands moss;
- (32) Thelypteris simulata --
(Davenp.) Nieuwl. Bog Fern;

Statutory Authority G.S. 106-202.12 through 106-202.19.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Commerce intends to amend regulation cited as 4 NCAC 1F .0306.

The proposed effective date of this action is August 1, 1987.

The public hearing will be conducted at 10:00 a.m. on May 15, 1987 at Commerce Hearing Room Number 6158, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Comments may be given in either written or oral statements. Written statements not presented at the hearing may be directed to Leo Tilley, Assistant Secretary of Commerce. Public Hearing is scheduled for May 15, 1987 at 10:00 a.m. in Room 6158 of the Dobbs Building located on 430 North Salisbury Street, Raleigh, N.C.

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1F - GUARANTY AGAINST LOSS RESERVES AND LOANS FOR BASIC INDUSTRIAL BUILDINGS

SECTION .0300 - APPLICATION PROCEDURES

.0306 STAFF APPROVAL AND REVIEW

(c) In determining his decision, the secretary will give funding priorities to the projects which meet the highest number of 12 review criteria. In the event that several projects have the same relative standing in relation to the review criteria, primary funding preference will be given to those projects located in towns which have met the qualifications for the designation as a community of excellence and those communities of less than 15,000 population. If a project is approved, it will be funded for a period of one year, or up to fifty thousand dollars (\$50,000.00), plus accruing interest. However, if a project is located in a community of less than 15,000 population, the secretary may agree to increase the funding for that project to amounts of up to ~~one~~

PROPOSED RULES

~~hundred thousand dollars (\$100,000.00), two hundred fifty thousand dollars (\$250,000.00), or for a two three- year period of time, plus accruing interest.~~

Statutory Authority G.S. 143B-429; 143B-430.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Mental Retardation and Substance Abuse Services intends to adopt regulation cited as 10 NCAC 18J .0604 and amend regulations cited as 10 NCAC 18I .0120; 18Q .0702; 45G .0301; 45H .0202, .0203, .0204 and .0205.

The proposed effective date of this action is August 1, 1987.

The public hearing will be conducted at 10:45 a.m. on May 20, 1987 at The Governor's Room, Sheraton Crabtree, 4501 Creedmore Road, Raleigh, NC.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by May 19, 1987. The hearing record will remain open for written comments for 30 days from April 20, 1987 through May 19, 1987. Written comments must be sent to the APA Coordinator at the address specified above by May 19, 1987 and must state the proposed rule or rules to which the comments are addressed.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18I - ESSENTIAL SERVICES: GENERALLY

SECTION .0100 - PURPOSE: SCOPE: APPLICABILITY AND DEFINITIONS

.0120 DEFINITIONS

(28) "Deinstitutionalization

~~Client" means an individual who is residing in a state mental retardation center, a state psychiatric hospital, a group home for children who are mentally retarded, a specialized community residential center for children who are mentally retarded, or a group home for individuals who are mentally retarded and behaviorally disordered.~~

Statutory Authority G.S. 143B-147.

SUBCHAPTER 18J - ESSENTIAL SERVICES PROGRAM REQUIREMENTS FOR MENTAL RETARDATION

SECTION .0600 - STATE FACILITY RELATIONSHIPS

.0604 RESIDENTIAL POPULATION: GROUP HOMES FOR MR ADULTS

(a) Each area program shall assure that at least one-half of the total resident population of all group homes for mentally retarded adults in its catchment area is comprised of individuals who immediately prior to their admission to a group home for mentally retarded adults were:

(1) residents of a state mental retardation center, a state psychiatric hospital, a group home for children who are mentally retarded, a specialized community residential center for children who are mentally retarded, a group home for individuals who are mentally retarded and behaviorally disordered, or a certified ICF/MR facility;

(2) continuity of care clients as defined in G.S. 122C-63; or

(3) clients who had been processed and approved for admission to a state facility.

(b) The area program may be exempt from the requirements in (a) of this Rule if it is determined and approved in writing by the appropriate regional director that there is not a sufficient number of clients within the catchment area who fall within the categories listed

PROPOSED RULES

in (a) of this Rule to enable the area program to comply with the requirements of this Rule.

(c) Each area program shall maintain a written record indicating which clients in its area-operated or contract group homes for mentally retarded adults fall within the categories listed in (a) of this Rule.

Statutory Authority G.S. 122C-63; 143B-147.

SUBCHAPTER 18Q - STANDARDS FOR OPTIONAL ALCOHOLISM SERVICES PROGRAMS

SECTION .0700 - GROUP HOMES FOR ADULTS WHO ARE MENTALLY RETARDED

.0702 POPULATION SERVED

(a) Each group home shall be designed primarily to serve mentally retarded individuals who are at least 18 years of age and who are in need of a supervised living environment within a community setting.

(b) ~~At least one-half of the resident population of each group home, or in the case where there are several group homes in the catchment area, shall be individuals who meet the criteria or definition of "deinstitutionalization client."~~

(c) ~~(b)~~ No group home shall designate any bed for the continuous provision of respite services.

Statutory Authority G.S. 122C-51; 143B-147.

CHAPTER 45 - NORTH CAROLINA DRUG COMMISSION

SUBCHAPTER 45G - MANUFACTURERS, DISTRIBUTORS, DISPENSERS AND RESEARCHERS OF CONTROLLED SUBSTANCES

SECTION .0300 - PRESCRIPTIONS

.0301 PRESCRIPTION REQUIREMENTS GENERALLY

Compliance with the prescription requirements of the federal law, including the requirements presented in Part 1306 of Title 21 of the Code of Federal Regulations, shall be deemed compliance under General Statute Chapter 90, Article 5, ~~except the transfer of original prescription information for a controlled substance listed in Schedules III, IV, or V for the~~

~~purpose of refill dispensing is not permissible between pharmacies at any time.~~

Statutory Authority G.S. 90-100; 90-106; 143B-147.

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

.0202 SCHEDULE I

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers wherever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

~~(2) Alfentanil -- 9737~~

~~(30) (31) 3-Methylfentanyl -- 9813~~
~~(N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide)~~

~~(31) (32) 1-methyl-4- -- 9661~~
~~phenyl-4-pro-pionoxypiperidine (MPPP) , its optical isomers, salts and salts of isomers~~

~~(32) (33) 1-(2-phenyl -- 9663~~
~~ethyl)-4-phenyl-4-acet yl oxypiperidine (PEPAP) its optical isomers, salts and salts of isomers~~

Statutory Authority G.S. 90-88; 90-89; 143B-147.

.0203 SCHEDULE II

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, dextrophan excepted:

~~(1) Alfentanil -- 9737~~

Statutory Authority G.S. 90-88; 90-90; 143B-147.

.0204 SCHEDULE III

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any materials,

PROPOSED RULES

compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (12) Tiletamine and zolazepam or any salt thereof-
Some trade or other names for a tiletamine-zolazepam combination product: Telazol.
Some trade or other names for tiletamine:
2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam:
4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one.
flupyrzapon-- 7295

Statutory Authority G.S. 90-88; 90-91; 143B-147.

.0205 SCHEDULE IV

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any materials, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam -- 2882
 (2) Barbital -- 2145
 (3) Bromazepam -- 2748
 (4) Camazepam -- 2749
 (5) Chloral betaine -- 2460
 (6) Chloral hydrate -- 2465
 (7) Chlordiazepoxide -- 2744
 (8) Clobazam -- 2751
 (9) Clonazepam -- 2737
 (10) Clorazepate -- 2768
 (11) Clotiazepam -- 2752
 (12) Cloxazolam -- 2753
 (13) Delorazepam -- 2754
 (14) Diazepam -- 2765
 (15) Estazolam -- 2756
 (16) Ethchlorvynol -- 2540
 (17) Ethinamate -- 2545
 (18) Ethyl loflazepate -- 2758
 (19) Fludiazepam -- 2759
 (20) Flunitrazepam -- 2763
 (21) Flurazepam -- 2767
 (22) Halazepam -- 2762
 (23) Haloxazolam -- 2771
 (24) Ketazolam -- 2772
 (25) Loprazolam -- 2773

- (26) Lorazepam -- 2885
 (27) Lormetazepam -- 2774
 (28) Mebutamate -- 2800
 (29) Mcdazepam -- 2836
 (30) Mecprobamate -- 2820
 (31) Methohexital -- 2264
 (32) Methylphenobarbital (mephobarbital) -- 2250
 (33) Midazolam -- 2884
 (34) Nimetazepam -- 2837
 (35) Nitrazepam -- 2834
 (36) Nordiazepam -- 2838
 (37) Oxazepam -- 2835
 (38) Oxazolam -- 2839
 (39) Paraldehyde -- 2585
 (40) Petrichloral -- 2591
 (41) Phenobarbital -- 2285
 (42) Pinazepam -- 2883
 (43) Prazepam -- 2764
 (44) Quazepam -- 2881
 (45) Temazepam -- 2925
 (46) Tetrazepam -- 2886
 (47) Triazolam -- 2887

Statutory Authority G.S. 90-88; 90-92; 143B-147.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to amend regulations cited as 11 NCAC 12 .0319; .0604-.0605; .0607-.0609.

The proposed effective date of this action is September 1, 1987.

The public hearing will be conducted at 10:00 a.m. on May 15, 1987 at Hearing Room at the North Carolina Department of Insurance, located on the Third Floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Written comments and requests for oral presentations may be sent to F. J. Di Pasquantonio, Post Office Box 26387, Raleigh, NC 27611 - Telephone (919) 733-4700.

CHAPTER 12 - LIFE ACCIDENT AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

.0319 SUBROGATION REGULATED
 Life or accident and health

PROPOSED RULES

insurance forms shall not contain a provision allowed subrogation of benefits.

Group accident and health insurance policies, group subscriber contracts issued by hospital and medical service corporations, and group health maintenance organization evidences of coverage may contain subrogation of benefits provisions if they conform to the following requirements:

- (1) That subrogation and reimbursement rights be restricted solely to recovery against third party tortfeasors causing the injury.
- (2) That under no circumstances shall the subrogation and reimbursement recovery exceed one-third of the net recovery made against a tortfeasor, with the term "net recovery" being defined as the recovery an injured party makes against a negligent tortfeasor less attorneys' fees and expenses incurred in making the recovery.

Statutory Authority G.S. 51-1; 57-4; 57-7; 57B-8; 57B-18; 58-9; 58-249; 58-254.4; 58-254.5; 58-254.7.

SECTION .0600 - REPLACEMENT REGULATIONS

.0604 EXEMPTIONS

- (5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, agents or brokers proposing replacement shall comply with the requirements of Section 5.A. Rule .0605 (a).
- (6) Registered Contracts shall be exempt from the requirements of Sections 7.B.2. and 7.B.3. Rule .0607(2)(b) and .0607(2)(c) requiring provision of Policy Summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

Statutory Authority G.S. 58-9.

.0605 DUTIES OF AGENTS AND BROKERS

- (a)
 - (3) The requirements of 5A(1) Rule .0605(a)(1) and (2) may be satisfied by suitable questions on the application.
- (b)
 - (3) Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to Section 5.B.1. Rule .0605(b)(1).

Statutory Authority G.S. 58-9.

.0607 DUTIES OF INSURERS THAT USE AGENTS OR BROKERS

Each insurer that uses an agent or broker in a life insurance or annuity sale shall:

- (2)
 - (a)
 - (ii) a copy of the Replacement Notice provided the applicant pursuant to Section 5.B.1. Rule .0605(b)(1). Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
 - (b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to Section 7.B.1. Rule .0607(2)(a) and a Policy Summary, Contract Summary or ledger statement containing Policy Data on the proposed life insurance as required by N.C.G.S. 58-213.6-213.12 and for an annuity a contract summary as required in Section 7.B.3. Rule .0607(2)(c). Cost indices and equivalent level annual dividend figures need not be included in the Policy Summary or ledger statement.

PROPOSED RULES

All required items shall be sent within five working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

- (d) Each existing insurer or such insurer's agent or broker that undertakes a conservation shall furnish the policyowner with a Policy Summary for the existing life insurance or ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of N.C.G.S. 58-213.6 through 213.12, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in Section B(3) above. The replacing insurer may ~~71.18~~ request the existing insurer to furnish it with a copy of the Summaries or ledger statements, which shall be within five working days of the receipt of the request.

Statutory Authority G.S. 58-9.

.0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES

- (b)
(3) Comply with the

requirements of ~~Section 7.B.2, Rule .0607(2)(b)(c),~~ if the applicant furnishes the names of the existing insurers, and the requirements of ~~Section 7.C, Rule .0607(3),~~ except that it need not maintain a replacement register.

Statutory Authority G.S. 58-9.

.0609 PENALTIES

(a) A violation of this Regulation shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this Regulation shall be subject to such penalties as ~~may be appropriate under the Insurance Laws provided for in~~ N.C.G.S. 58-42 and 58-44.6.

Statutory Authority G.S. 58-9.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend regulations cited as 12 NCAC 9A .0103; 9B .0107-.0115; .0202; .0207; .0217; .0302; .0304-.0305; .0309-.0310; and .0408-.0409; 9C .0308; .0403; .0601; .0604; 9D .0202.

The proposed effective date of this action is November 1, 1987.

The public hearing will be conducted at 10:00 a.m. on May 28, 1987 at City Council Chambers, Cary Municipal Building, Cary, North Carolina.

Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. Written statements not presented at the

PROPOSED RULES

Hearing should be directed to the undersigned. The proposed rules are available for public inspection and copies may be obtained at the following address:

*Criminal Justice Standards Division
North Carolina Department of
Justice
1 West Morgan Street
Room 15, Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602*

CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 9A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

.0103 DEFINITIONS

The following definitions apply throughout this chapter, except as modified in 12 NCAC 9A .0107 for the purpose of the commission's rule-making and administrative hearing procedures:

(6) "Criminal Justice Officer(s)" means and incorporates the administrative and subordinate personnel of the departments, agencies, units or entities comprising the 'criminal justice agencies' as defined in Subparagraph (I) of this Rule, who are sworn law enforcement officers, both state and local, with the power of arrest; state correctional officers; state probation and parole officers, including probation and parole intake officers, and probation parole officers-surveillance, and probation parole intensive officers; state parole case analyst; officers, supervisory and administrative personnel of local confinement facilities; or state youth correctional services officers.

(34) State "Youth Correctional Services Officer" means an employee of the North Carolina Division of Youth Services whose duties include the evaluation, treatment, instruction, or supervision of

juveniles committed to that agency.

Statutory Authority G.S. 17C-2; 17C-6; 153A-217.

SUBCHAPTER 9B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION AND TRAINING

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

.0107 MINIMUM STANDARDS FOR CORRECTIONAL OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every correctional officer employed by an agency in North Carolina shall: ~~be a high school graduate or have passed the General Education Development test indicating high school equivalency.~~

(1) not have committed or been convicted of:

(a) a felony within the five year period prior to the date of application for employment; or

(b) a crime for which the punishment could have been imprisonment for more than two years, within the five year period prior to the date of application for employment; or

(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or

(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or

(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;

(2) be a high school graduate or have passed the General Education Development Test indicating high school equivalency.

Note: Although not presently required by these Rules, the commission recommends that on the date of employment or within

24 months thereafter, every candidate employed as a correctional officer have no less than six semester units or nine quarter units of educational credit at an accredited institution of higher education.

Statutory Authority G.S. 17C-6.

**.0108 MINIMUM STANDARDS FOR
STATE YOUTH SERVICES
OFFICERS**

In addition to the requirements for criminal justice officers contained in Rule .0101 of the Section, every state youth correctional services officer employed by the Division of Youth Services, Department of Human Resources shall:

Note: Although not presently required by these Rules, the commission recommends that every youth correctional officer continue his education through an accredited institution of higher learning at the rate of not less than six semester units or nine quarter units of educational credit during each 24 month period following employment.

Statutory Authority G.S. 17C-6.

**.0109 MINIMUM STANDARDS FOR
PROBATION/PAROLE OFFICERS**

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every probation/parole officer employed by an agency in North Carolina shall :

- be a graduate of an accredited college or university and have attained at least the baccalaureate degree.

(1) not have committed or been convicted of:

(a) a felony within the five year period prior to the date of application for employment; or

(b) a crime for which the punishment could have been imprisonment for more than two years, within the five year period prior to the date of application for employment; or

(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or

(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or

(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;

(2) be a graduate of an accredited college or university and have attained at least the baccalaureate degree.

Note: Although not presently required by these Rules, the commission recommends that every probation parole officer continue his education through an accredited institution of higher learning at the rate of not less than six college semester units or nine quarter units of educational credit during each 24 month period following employment.

Statutory Authority G.S. 17C-6.

**.0110 MINIMUM STANDARDS FOR
PROBATION/PAROLE INTAKE
OFFICERS**

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every probation/parole intake officer shall :

- have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university.

(1) not have committed or been convicted of:

(a) a felony within the five year period prior to the date of application for employment; or

(b) a crime for which the punishment could have been imprisonment for more than two years, within the five year period prior to the date of application for employment; or

(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or

(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or

(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;

(2) have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university.

Note: Although not presently required by these Rules, the commission recommends that every probation parole intake officer continue his education through an accredited institution of higher learning at the rate of not less than six semester units or nine quarter units of educational credit during each 24 month period following employment.

Statutory Authority G.S. 17C-6.

.0111 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law enforcement officer employed by an agency in North Carolina shall:

- (1) not have committed or been convicted of:
 - (a) a felony; or
 - (b) a crime for which the punishment could have been imprisonment for more than two years; or
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
- (e) (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
- (d) (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the

applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;

Statutory Authority G.S. 17C-6; 17C-10.

.0112 MINIMUM STANDARDS FOR PAROLE CASE ANALYSTS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every parole case analyst employed by an agency in North Carolina shall: be a graduate of an accredited college or university and have attained at least the baccalaureate degree.

- (1) not have committed or been convicted of:
 - (a) a felony within the five year period prior to the date of application for employment; or
 - (b) a crime for which the punishment could have been imprisonment for more than two years, within the five year period prior to the date of application for employment; or
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;
- (2) be a graduate of an accredited college or university and have attained at least the baccalaureate degree.

Note: Although not presently required by these Rules, the commission recommends that every parole case analyst continue his education through an accredited institution of higher learning at the rate of not less than 6 college semester units or 9 quarter units of educational credit

during each 24 month period following employment.

Statutory Authority G.S. 17C-6.

.0113 MINIMUM STANDARDS
PROBATION/PAROLE
OFFICERS-SURVEILLANCE

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every probation/parole officer-surveillance shall : ~~have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university.~~

- (1) ~~not have committed or been convicted of:~~
 - (a) ~~a felony within the five year period prior to the date of application for employment; or~~
 - (b) ~~a crime for which the punishment could have been imprisonment for more than two years, within the five year period prior to the date of application for employment; or~~
 - (c) ~~a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or~~
 - (d) ~~four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or~~
 - (e) ~~four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;~~

- (2) ~~have attained the associate degree or have satisfactorily completed at least 60 semester hours of educational credit or 90 quarter hours of educational credit at an accredited technical institute, technical college, community college, junior college, college, or university.~~

Note: Although not presently required by these Rules, the commission recommends that every probation parole

surveillance officer continue his education through an accredited institution of higher learning at the rate of not less than six semester units or nine quarter units of educational credit during each 24 month period following employment.

Statutory Authority G.S. 17C-6.

.0114 MINIMUM STANDARDS FOR
LOCAL CONFINEMENT
PERSONNEL

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every officer, supervisor or administrator employed by a local confinement facility in North Carolina shall:

- (1) not have committed or been convicted of:
 - (a) a felony; or
 - (b) a crime for which the punishment could have been imprisonment for more than two years; or
 - (c) ~~a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or~~
 - (c) (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (d) (c) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;

Statutory Authority G.S. 17C-2; 17C-6; 17C-10.

.0115 MINIMUM STANDARDS
PROBATION/PAROLE
INTENSIVE OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every probation/parole intensive officer employed by an agency in North Carolina shall : ~~be a graduate of an accredited college or university and have attained at least the baccalaureate degree.~~

- (1) ~~not have committed or been convicted of:~~

- (a) a felony within the five year period prior to the date of application for employment; or
- (b) a crime for which the punishment could have been imprisonment for more than two years, within the five year period prior to the date of application for employment; or
- (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
- (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
- (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;
- (2) be a graduate of an accredited college or university and have attained at least the baccalaureate degree.

Statutory Authority G.S. 17C-6.

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

.0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

- (a)
 - (1)
 - (A)
 - (i) Each basic training course required for criminal justice officer certification shall be presented with a minimum of 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed. This Rule shall not apply to presentations of the "Basic Training -- State Youth ~~Correctional~~ Services Officers" course.
- (16)
 - (C) Upon successful

completion of a commission-accredited training course by correctional, state youth ~~correctional~~ services, or probation/parole trainees, the director of the school conducting such course shall notify the commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion.

Statutory Authority G.S. 17C-6.

.0207 BASIC TRAINING--STATE YOUTH SERVICES OFFICERS

- (a) The basic training course for state youth ~~correctional~~ services officers shall consist of a minimum of 167 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a state youth ~~correctional~~ services officer.
- (b) Each basic training course for state youth ~~correctional~~ services officers shall include training in the following identified topical areas:

Statutory Authority G.S. 17C-6.

.0217 BASIC TRAINING: ALCOHOL LAW ENFORCEMENT AGENTS

- (a) The basic training course for alcohol law enforcement agents appointed by the Secretary of Crime Control and Public Safety as authorized under General Statute 18B-500 shall consist of a minimum of ~~667~~ 601 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as an alcohol law enforcement agent.
- (b) Each basic training course for alcohol law enforcement agents shall include the following identified topic areas and minimum instructional hours for each area:
 - (1) Orientation 3 Hours
 - (2) Physical Training ~~79~~ 75 Hours
 - (3) History of ALE 1 Hour
 - (4) Constitutional Law, Government and Civil Rights 14 Hours
 - (5) Firearms ~~64~~ 56 Hours

PROPOSED RULES

(6)	Knowledge of Law, General Criminal Law and Evidence	36	Hours	(30)	ALE Policy and Procedure	8	Hours
(7)	Chapter 18B	40	Hours		Statutory Authority G.S. 17C-6; 17C-10.		
(8)	ABC Regulations	40	<u>32</u> Hours				
(9)	Controlled Substances Act Enforcement	16	Hours		SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS		
(10)	First Responder	24	Hours		.0302 GENERAL INSTRUCTOR CERTIFICATION		
(11)	ALE Vehicle Operations	40	Hours		Certifications issued in this category after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule .0304, entitled "Specific Instructor Certification". To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the commission. At a minimum, the applicant shall meet the following requirements for General Instructor Certification:		
(12)	Arrest, Search and Seizure	60	<u>40</u> Hours		(2) Present evidence showing successful completion of a commission-accredited instructor training program or an equivalent instructor training course as determined by the commission. Applicants who hold current General Instructor Certification under any previously commission-adopted instructor certification program shall receive recognition for any previously completed commission-accredited instructor training courses or previously recognized equivalent thereof. All applicants must have previously completed an instructor training course within the ~~twenty-four~~ 12 month period preceding application. Persons having completed a commission-accredited instructor training course or an equivalent instructor training course as determined by the commission and not having made application within ~~two years~~ 12 months of completion of the course shall complete a subsequent		
(13)	Agent Survival Enforcement Psychology	4	Hours				
(14)	Enforcement Sociology	4	Hours				
(15)	Stress Management	4	Hours				
(16)	Defensive Tactics	52	<u>44</u> Hours				
(17)	Civil Liability	4	Hours				
(18)	DUI and Motor Vehicle Law	14	Hours				
(19)	ALE Investigations	32	<u>24</u> Hours				
(20)	Written Communications	40	Hours				
(21)	Criminal Justice System	24	Hours				
(22)	Verbal Communications	46	<u>12</u> Hours				
(23)	Evidence	2	Hours				
(24)	Juvenile Law	16	Hours				
(25)	Observation	6	Hours				
(26)	Reading	2	Hours				
(26)	Math	4	<u>2</u> Hours				
(27)	ALE Tactical Operations	4	Hours				
(28)	Hazardous Devices, Explosives and Components	4	Hours				
(29)	Community Relations, Human Relations, Ethics and Courtesy	40	<u>8</u> Hours				

commission-accredited instructor training course in its entirety.

Statutory Authority G.S. 17C-6.

.0304 SPECIFIC INSTRUCTOR CERTIFICATION

(d) To qualify for Specific Instructor Certification in the State Youth ~~Correctional Services Medical~~ Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify in the following manner:

Statutory Authority G.S. 17C-6.

.0305 TERMS AND CONDITIONS OF SPECIFIC INSTRUCTOR CERTIFICATION

(b)
(4) in the case of the Division of Youth Services' Specialized Unarmed Self-Defense Instructors and State Youth ~~Correctional Services Medical~~ Emergencies Instructors, a favorable written evaluation by a commission or staff member, or a Staff Development Specialist of the Division of Youth Services, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for the topic where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted.

(c)
(5) in the case of the Division of Youth Services' Specialized Unarmed Self-Defense Instructors and State Youth ~~Correctional Services Medical~~ Emergencies Instructors, a favorable written evaluation by a commission or staff member, or a Staff Development Specialist of the Division of Youth Services, based on an on-site classroom evaluation of the instructor in a commission-accredited training

course. The instructor must have taught a minimum of four hours in the topic for which full Specific Instructor Certification was granted for the two-year period.

Statutory Authority G.S. 17C-6.

.0309 RADAR AND TD SPEED MEASUREMENT INSTRUMENT INSTRUCTORS

In addition to all requirements contained in .0308 of this Section, applicants in this category shall complete a ~~40~~ 30 hour instructor training course in time-distance speed measurement as required in 12 NCAC 9B .0211.

Statutory Authority G.S. 17C-6.

.0310 TERMS AND CONDITIONS: SMI INSTRUCTORS

(a) The term of a radar instructor or a radar and time-distance speed measurement instrument instructor is two years from the date the commission issues the certificate, unless sooner terminated by the commission. The certificate may be renewed for subsequent a similar period three year periods. The SMI instructor desiring renewal shall:

- (1) Hold general instructor certification as required in 12 NCAC 9B .0303.
- (2) Have been active in the SMI instructional process during the previous two year certification period.
- (3) Successfully complete a commission-approved SMI instructor re-certification course as required in 12 NCAC 9B .0218 or .0219.

(b) All SMI instructors seeking re-certification shall successfully complete the re-certification course within 12 months from expiration of the initial certification period or re-certification period, but not sooner than six months prior to the expiration of the previous certification. If re-certification training is not obtained within the 12-month period, successful completion of the appropriate instructor training program as required in 12 NCAC 9B .0308 will be required to obtain ~~re~~ instructor

certification. This prescribed 12-month period does not extend the ~~24-month~~ initial instructor certification period.

Statutory Authority G.S. 17C-6.

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

.0408 COMPREHENSIVE WRITTEN EXAMINATION/BASIC CERTIFICATION

(d) A trainee shall pass the operator training courses as specified in Rules 9B .0212, .0213, and .0214 by achieving a minimum of 70 percent correct answers.

(e) A trainee shall pass the operator training re-certification courses as specified in Rules 9B .0220, .0221, and .0222 by achieving a minimum of 75 percent correct answers.

~~(e)~~ (f) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated 100 percent competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent, as specified in (d) of this Rule, on the commission's comprehensive written examination may request the director of the Standards Division to authorize a re-examination of the trainee.

Statutory Authority G.S. 17C-6.

.0409 SATISFACTION OF MINIMUM TRAINING - SMI OPERATORS

(a) To satisfy the minimum training requirements for operator certification, a trainee shall:

(1) achieve a score of 70 percent correct answers on the comprehensive written examination, provided for in 12 NCAC 9B .0408 (d).

(c) To satisfy the minimum training requirements for operator re-certification, a trainee shall:

(1) achieve a score of ~~70~~ 75 percent correct answers on the comprehensive written examination provided for in 12 NCAC 9B .0408 (e).

Statutory Authority G.S. 17C-6.

SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

.0308 INSTRUMENT OPERATORS CERTIFICATION PROGRAM

(b) Certification in either category will reflect operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification or re-certifications shall be continuous for a two year period from the date of issue and re-certifications shall be continuous for a three year period from the date of issue, unless sooner terminated by the commission. At a minimum, the applicant shall meet the following requirements for operator certification or re-certification upon the presentation of documentary evidence showing that the applicant:

(c) ~~Certification for operators awarded in either category shall expire on midnight 24 months from the date of issue, unless sooner terminated by the commission.~~ Certified operators shall be notified by the commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a commission-approved re-certification course within 12 months from the expiration of the previous certification course but not sooner than six months prior to the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 9B .0409(a) will be required to obtain operator re-certification. This prescribed 12 month period shall not extend the original operator certification period beyond its specific expiration date.

Statutory Authority G.S. 17C-6.

SECTION .0400 - ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS AND TRAINING COURSES

.0403 REPORTS OF TRAINING COURSE PRESENTATION AND COMPLETION

(b) Upon successful completion of a commission-accredited training course by correctional, state youth correctional services, or probation/parole trainees, the director of the school conducting such course shall notify the commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion.

Statutory Authority G.S. 17C-6; 17C-10.

SECTION .0600 - EQUIPMENT AND PROCEDURES

.0601 APPROVED SPEED-MEASURING INSTRUMENTS

(a) The following speed instruments are approved for radio microwave (radar) use, provided they are not equipped with dual antennas:

- (1) CMI Speed Gun (No longer approved in N.C.)
- (2) CMI Speed Gun Five (No longer approved in N.C.)
- (3) CMI Speed Gun Eight (No longer approved in N.C.)
- (4) Decatur DCP (No longer approved in N.C.)
- (5) Decatur Ra-Gun G-1 and G-2 (No longer approved in N.C.)
- (6) Decatur Ra-Gun G-5 and G-6 (No longer approved in N.C.)
- (7) Decatur Rangemaster 715 (No longer approved in N.C.)
- (8) Decatur Rangemaster 715 (No longer approved in N.C.)
- (9) Decatur MV 724 (No longer approved in N.C.)
- (10) Kustom IIR-4 (No longer approved in N.C.)
- (11) Kustom TR-6 (No longer approved in N.C.)
- (12) Kustom HR-8 Stationary
- (13) Kustom HR-12 Moving/Stationary
- (14) Kustom MR-7 (No longer approved in N.C.)
- (15) Kustom MR-9 (No longer approved in N.C.)
- (16) Kustom KR-11 Moving/Stationary
- (17) MPH K-15 Stationary

- (18) MPH K-55 Moving/Stationary
- (19) MPH S-80 Moving/Stationary
- (20) Sa-So (No longer approved in N.C.)
- (21) Simplex FAR 23 (No longer approved in N.C.)
- (22) Decatur Ra-Gun (RAS & "N" Series) Stationary
- (23) Simplex FAR 54 (No longer approved in N.C.) ~~Stationary~~
- (24) Decatur Ra-Gun 1 and 2 (RAS) (included in No. 22)
- (25) Kustom KR-10 SP Moving/Stationary
- (26) MPH K-55 with SOS Adapter (No longer approved in N.C.) ~~Moving~~
- (27) MPH S-80 with SOS Adapter (No longer approved in N.C.) ~~Moving~~
- (28) Kustom Falcon Stationary
- (29) Kustom Roadrunner Stationary
- (30) Kustom Trooper Moving/Stationary
- (31) Decatur MVR 715 Moving/Stationary
- (32) Decatur MVR 724 Moving/Stationary
- (33) Decatur Hunter ~~Moving/Stationary~~

(b) The following speed instruments are approved for time-distance use provided that the instrument is not capable of accepting double time or double distance into the computer:

- (1) KR-11; Stopwatch Mode Kustom Signals, Inc.
- (2) TDS Computer (No longer approved in N.C.) ~~Stephenson~~
- (3) Vascar I Federal Sign and Signal Corporation
- (4) Vascar II Federal Sign and Signal Corporation
- (5) Vascar Plus Traffic Safety Systems, Inc.

Statutory Authority G.S. 17C-6.

.0604 TESTING: TIME-DISTANCE

(a) The minimum specific test for time-distance speed-measuring instruments shall include:

- (3) ~~TDS Computer Stephenson.~~

With the power on and the computer erased and ready to accept distance and time information, enter an exact quarter or one-half mile of distance from a pre-measured location on the highway by turning the distance switch on at the beginning of the pre-measured course and off at the end of the pre-measured course. To be within tolerance the distance readout shall agree with the measured distance within .4 percent i.e. one quarter mile .250 plus-minus .001 (.249, .250 or .251) or one half mile .500 plus-minus .002 (.498, .499, .500, .501 or .502). Turn on the distance lock switch and enter 15.0 seconds of time. The mph readout shall be at least 59.3 but no more than 60.0 for a one quarter mile distance. For one half a mile of distance enter 30.0 seconds, the mph readout shall be at least 59.6 but no more than 60.1.

(4) (3)
(5) (4)

Statutory Authority G.S. 17C-6.

SUBCHAPTER 9D - PROFESSIONAL
CERTIFICATE PROGRAMS

SECTION .0200 - CRIMINAL JUSTICE
OFFICERS' PROFESSIONAL
CERTIFICATE PROGRAM

.0202 GENERAL PROVISIONS

- (a)
- (2) The officer shall hold general certification with the commission in one of the following categories:
- (D) state youth correctional services officer;
 - (F) probation/parole officer-surveillance;
 - (G) probation/parole intensive officer.
- (c) Certificates will be awarded in an officer's area of expertise only. Separate sub-programs will be administered as follows:
- (2) Youth Services Corrections Certificate. The Youth Services Corrections Certificate is appropriate for permanent, paid state youth services correctional officers employed by the

Division of Youth Services of the Department of Human Resources.

Statutory Authority G.S. 17C-6.

**TITLE 15 - DEPARTMENT OF
NATURAL RESOURCES AND
COMMUNITY DEVELOPMENT**

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulations cited as 15 NCAC 2D .0524, .0525, .0530, .0531, and .0532.

The proposed effective date of this action is October 1, 1987.

The public hearing will be conducted at 2:00 p.m. on May 15, 1987 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Comment Procedures: All persons interested in these matters are invited to attend the public hearings. Persons desiring to comment on the proposals are requested to give written notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the department within 30 days. Additional information concerning the hearing or the proposals may be obtained by contacting: Mr. Thomas C. Allen, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611-7687, (919) 733-3340.

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION
CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL
STANDARDS

.0524 NEW SOURCE PERFORMANCE
STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

(55) Basic Oxygen Process Steelmaking Facilities For Which Construction Is Commenced After January 20, 1983: (40 CFR 60.1 to 60.39 and 60.140a to 60.149a);

(56) Industrial-Commercial-Institutional Steam Generating Units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b).

(d) Paragraphs (b) (c) and (d) (c) of Regulation .0601 of Subchapter 2H of this Chapter are not applicable to any source to which this Regulation applies. The source shall apply for a permit as required in Paragraph (a) (b) of Regulation .0601 of Subchapter 2H of this Chapter.

(c) The version of the new source performance standard listed in Paragraph (a) of this Regulation is that which appeared in the Code of Federal Regulations as of February 14, 1987. November 4, 1986

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and any other provisions, as required

therein, rather than with any otherwise-applicable regulation in this Subchapter Section or Section .0900 of this Subchapter which would be in conflict therewith:

(d) Paragraphs (c) (b) and (d) (c) of Regulation 15 NCAC 2H .0601 are not applicable to any source to which this Regulation applies. The source shall apply for a permit as required in Paragraph (b) (a) of Regulation 15 NCAC 2H .0601.

Statutory Authority G.S. 143-215.3(a) (1); 143-215.107 (a) (5); 143-215.68.

.0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of this Regulation is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR ~~51.24~~ 51.166. 40 CFR ~~51.24~~ 51.166 and other referenced Code of Federal Regulations as used in this Regulation refer to those federal regulations in effect on December 16, 1980 March 1, 1987.

(b) For the purposes of this Regulation the definitions contained in 40 CFR ~~51.24~~ 51.166 (b) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR ~~51.24~~ 51.166 (b)(3)(ii) shall be seven years. The limitation specified in 40 CFR ~~51.24~~ 51.166 (b)(15)(ii) shall not apply.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR ~~51.24~~ 51.166 (g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR ~~51.24~~ 51.166 (g) (3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR ~~51.24~~ 51.166

(e) Lands within the boundaries of Indian Reservations may be redesignated only by appropriate Indian Governing Body.

(c) In areas designated as Class I, II, or III, increases in pollutant concentrations over the baseline concentration shall be limited to the values set forth in 40 CFR ~~51.24~~

51.166 (c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR ~~51.24~~ 51.166 (d).

(f) Concentrations attributable to the conditions described in 40 CFR ~~51.24~~ 51.166 (f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR ~~51.24~~ 51.166 (f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR ~~51.24~~ 51.166 (f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR ~~51.24~~ 51.166 (i) and by extension in 40 CFR ~~51.24~~ 51.166 (j) through (o). The minimum requirements described in the portions of 40 CFR ~~51.24~~ 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Regulation, except as otherwise provided in this Regulation. Wherever the language of the portions of 40 CFR ~~51.24~~ 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Regulation. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the state plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Regulation. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the director as specified in 40 CFR ~~51.24~~ 51.166 (n)(2).

(h) Paragraphs (c), (b) and (d) (c) of Regulation 15 NCAC 2H .0601 are not applicable to any source to which this Regulation applies. Sources to which this Regulation applies shall apply for a permit as required in Paragraph (b) (a) of Regulation 15 NCAC 2H .0601.

(i) A substitution or modification of a model as provided for in 40 CFR ~~51.24~~ 51.166 (l) shall be subject to public comment

procedures in accordance with the requirements of 40 CFR ~~51.24~~ 51.166 (q).

(m) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR ~~51.24~~ 51.166 (s)(1) if the requirements of 40 CFR ~~51.24~~ 51.166 (s)(2) have been met, subject to the condition of 40 CFR ~~51.24~~ 51.166 (s)(3), and with the allowance set forth in 40 CFR ~~51.24~~ 51.166 (s)(4).

(n) If a source to which this Regulation applies impacts an area designated Class I by requirements of 40 CFR ~~51.24~~ 51.166 (e), notice to EPA shall be provided as set forth in 40 CFR ~~51.24~~ 51.166 (p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR ~~51.24~~ 51.166 (p)(3) during the public comment period or public hearing to the director and if the director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR ~~51.24~~ 51.166 (p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(o) A permit application subject to this Regulation shall be processed in accordance with the procedures and requirements of 40 CFR ~~51.24~~ 51.166 (q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Notwithstanding this determination, the 90-day period provided for the commission to act by G.S. 143-215.108(b) shall be considered to begin at the end of the period allowed for public comment, at the end of any public hearing held on the application, or when the applicant supplies information requested by the director in answer to comments received during the comment period or at any public hearing, whichever is later. The director shall notify the Administrator of EPA of any application considered approved by expiration of the 90 days; this notification shall be made within 10 working days of the date of expiration. If no permit action has

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been taken when 70 days of the 90-day period have expired, the commission shall relinquish its prevention of significant deterioration (PSD) authority to EPA for that permit. The commission shall notify by letter the EPA Regional Administrator and the applicant when 70 days have expired. EPA will then have responsibility for satisfying unmet PSD requirements, including permit issuance with appropriate conditions. The permit applicant must secure from the commission, a permit revised (if necessary) to contain conditions at least as stringent as those in the EPA permit, before beginning construction. Commencement of construction before full PSD approval is obtained constitutes a violation of this Regulation.

(r) Revisions of the North Carolina State Implementation Plan for Air Quality shall comply with the requirements contained in 40 CFR ~~51.24~~ 51.166 (a)(2).

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (3); 143-215.107 (a) (5); 143-215.107 (a) (7); 143-215.108 (b).

.0531 SOURCES IN NONATTAINMENT AREAS

(b) For the purpose of this Regulation the definitions contained in 40 CFR ~~51.18(j)(4)~~ 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR ~~51.18 (j) (4) (vii) (c) (4)~~ 51.165 (a) (1) (vi) (C) (1) shall be seven years.

(c) This Regulation is not applicable to:

(4) a new source or modification which qualifies for exemption under the provision of 40 CFR ~~51.18(j)(4)~~ 51.165(a)(4) ; and

(d) Paragraphs ~~(c)~~ (b) and ~~(4)~~ (c) of Regulation 15 NCAC 211 .0601 are not applicable to any source to which this Regulation applies. The source ~~must~~ shall apply for a permit as required in Paragraph ~~(b)~~ (a) of Regulation 15 NCAC 211 .0601.

(e) To issue a permit to a source to which this Regulation applies, the director shall determine that the

source will meet the following requirements:

(3) The source will satisfy one of the following conditions:

(B) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new source will be less than the emissions reductions. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained.

Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable regulations in effect prior to the application. The difference between the emissions from the new source and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR ~~51.18 (j) (3) (ii) (a)~~ 51.165 (a) (3) (ii) (A) through ~~(g)~~ (G). The requirements of this Part may be partially waived if the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and only if:

(i) the permit applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with this Part;

(ii) the applicant has secured all available emission offsets; and

(iii) the applicant will continue to seek the necessary emission offsets and apply them when they become available.

(j) The version of the referenced Code of Federal Regulations in this Regulation is that as of ~~May 20, 1984~~ March 1, 1987.

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Statutory Authority G.S. 143-215.3
(a) (1); 143-215.107 (a) (5);
143-215.108 (b).

.0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(c) The Regulation is not
applicable to:

(5) a new or modified source
whose impact will increase not
more than:

(E) 5 ug/m3 of total suspended
~~particulates~~ particulates on a
24-hour basis,

(H) 2 mg/m3 of carbon
monoxide on a one-hour
basis, ~~at any locality that does
not meet a national ambient
air quality standard.~~

at any locality that does not meet a
national ambient air quality
standard.

(d) Paragraphs ~~(c)~~ (b) and ~~(d)~~ (c)
of Regulation 15 NCAC 2H .0601
are not applicable to any source to
which this Regulation applies.
These sources shall apply for a
permit as required in Paragraph ~~(b)~~
(a) of Regulation 15 NCAC 2H
.0601.

(g) The version of the referenced
Code of Federal Regulations in this
Regulation is that as of ~~May 20,~~
1984 March 1, 1987.

Statutory Authority G.S. 143-215.3
(a) (1); 143-215.107 (a) (5);
143-215.108 (b).

*Notice is hereby given in accordance
with G.S. 150B-12 that the Division
of Water Resources intends to adopt
regulations cited as 15 NCAC 2G
.0501 - .0507.*

*The proposed effective date of this
action is September 1, 1987.*

*The public hearing will be conducted
at 7:00 p.m. on May 18, 1987 at
Ground Floor Hearing Room,
Archdale Building, 512 N. Salisbury
Street, Raleigh, NC.*

*Comment Procedures: Comments,
statements, data, and other
information may be submitted in
writing prior to and up to 30 days
following the public hearing or may
be presented orally at the hearing.*

*So that all persons desiring to speak
may do so, lengthy statements may
be limited at the discretion of the
hearing officers. Oral presentations
which exceed three minutes must be
accompanied by a written copy which
will be filed with the hearing clerk at
the time of the registration. Written
comments should be sent to Kimberly
Brewer, DWR, P.O. Box 27687,
Raleigh, NC 27611.*

SUBCHAPTER 2G - WATER RESOURCES PROGRAMS

SECTION .0500 - ALLOCATION OF JORDAN LAKE WATER SUPPLY STORAGE

.0501 INTRODUCTION

To increase the availability of
municipal and industrial water
supplies, the State of North Carolina
requested the U.S. Army Corps of
Engineers to designate 32.62 percent
of the Jordan Lake conservation
storage, between the elevations 202
mean sea level (msl) and 216 msl, as
water supply storage.

The State, acting through the
Environmental Management
Commission, will assign to local
governments having a need for water
supply capacity any interest held by
the State in such storage, with
proportional payment by the user to
the State for the project's capital,
interest, and operating costs.

Upon signing the water supply
storage contract with the U.S. Army
Corps of Engineers, the Commission
will apply the following procedures
in allocating Jordan Lake water
supply storage.

Statutory Authority G.S. 143-215.3
(a) (1); 143-215.38 through .43;
143-354 (a) (11); 143B-282.

.0502 DEFINITIONS

As used throughout this
Subchapter:

- (1) "Capital costs" means initial
costs of the project;
- (2) "Commission" means
Environmental Management
Commission;
- (3) "Department" means the
North Carolina Department of
Natural Resources and
Community Development;
- (4) "Division" means the Division

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- of Water Resources;
- (5) "Effective date of allocation" means the date the Commission approves the allocation;
 - (6) "Interest costs" means interest accrued on the unpaid balance;
 - (7) "Local government" means any city, county, authority, sanitary district, metropolitan water district, or other local unit;
 - (8) "Operating costs" means Jordan Lake's state and federal operating, maintenance, replacement, and administrative costs associated with water supply storage;
 - (9) "State" means the state of North Carolina; and
 - (10) "Water supply storage" means storage of water for municipal or industrial use.

Statutory Authority G.S. 143-354 (a) (11).

.0503 FORMAL APPLICATION

(a) The commission may receive initial allocation requests from local governments beginning on this section's effective date. In order to be reviewed, applications must contain the following information:

- (1) Projected population and water use, including a detailed map of the existing and projected water service areas;
- (2) A listing of water sources presently available, including estimated yields of these sources;
- (3) An analysis of the yield, quality, and cost of alternative sources of water supply other than Jordan Lake that could meet or partially meet projected needs, including regionalization of systems;
- (4) A description of water-loss reduction and demand management practices to be used;
- (5) An outline of plans to use water from Jordan Lake, including proposed location of intake and water treatment plant(s), location of wastewater treatment plant(s), any proposed sharing of facilities or other cooperative arrangements with other local governments,

and a proposed schedule of development;

- (6) A plan for monitoring the quality of the raw and finished water in accordance with the requirements of North Carolina's Department of Human Resources and the U.S. Environmental Protection Agency;
 - (7) The estimated cost of developing water supply facilities at Jordan Lake, also costs of alternative sources of supply; and
 - (8) A letter of intent to enter into a financial commitment for Jordan Lake water storage.
- (b) The commission or the department may request such additional information as may be reasonably necessary for a complete understanding of the allocation request.

(c) Local governments may apply for two levels of allocation: Level I allocations are for applicants which have demonstrated an immediate need and will commence withdrawals within five years of the effective date of allocation; Level II allocations are for applicants with documented longer range needs for water.

(d) The applicant should include in the application the assumptions and the methodology used to develop projections. The commission will assist applicants by providing a copy of departmental procedures for projecting water supply demands and determining yields.

(e) Using departmental procedures for projecting water supply demands and determining yields, the department will provide the commission an independent assessment of the applicant's water supply needs.

Statutory Authority G.S. 143-215.3 (a) (1); 143-354 (a) (11); 143B-282.

.0504 ALLOCATION OF WATER SUPPLY STORAGE

(a) The segment of Jordan Lake proposed for a water supply withdrawal must be classified by the commission as a drinking water

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source prior to any allocation of Jordan Lake water supply storage. Prior to the first allocation of water supply storage at Jordan Lake, the commission shall hold one or more public meetings on the amount(s) requested by each applicant, the suitability of Jordan Lake water for public water supply use, the availability of alternative water sources, and the best utilization of the water resources of the region. For future allocation decisions, additional public meetings may be held as determined by the commission.

(b) The commission will assign Level I allocations of Jordan Lake water supply storage based on an intent to begin withdrawing water within five years of the effective date of allocation, on consideration of projected water supply needs for a period not to exceed 20 years, and on the design capacity of the associated withdrawal and treatment facilities.

(c) The commission will make Level II allocations of Jordan Lake water supply to applicants based on projected water supply needs for a period not to exceed 30 years.

(d) The commission will initially keep a portion of the water supply storage unallocated to meet future water supply needs as they develop.

(e) If further storage is requested by holders of Level II allocations, these parties must submit an application addendum to the commission for review.

(f) When holders of Level II allocations have documented an immediate need and wish to commence withdrawals within five years, their Level II allocations will be changed to Level I upon review and approval by the commission.

(g) The department will issue a notice that it has received applications for Level I and Level II allocations and requests for increases in allocations, with a 30-day period for comment. If there is significant public interest, the department may hold a public meeting to obtain comments and information, with appropriate notice.

(h) For applicants whose discharge

or intake represents a diversion pursuant to G.S. 153A-285 or 162A-7, the commission will coordinate the review of the diversion with the review of the allocation request.

(i) The commission will review the Level I and Level II allocations at five year intervals, beginning on the effective date of the first allocation, and will periodically review and adjust the reserve capacity to reflect Level I allocations as well as Level I and Level II requests.

(j) When assigning, reassigning, or transferring allocations, the commission will give priority to, (1) Level I applicants over Level II applicants and holders, and (2) daily use over use only during water shortages, with a goal of maximizing full use of the resource.

Statutory Authority G.S. 143-54 (a) (11); 143-215.3 (a) (1); 143B-282; 153A-285; 162A-7.

.0505 NOTIFICATION AND PAYMENT

(a) The commission will notify applicants of the decisions made regarding their allocation requests.

(b) Recipients of Level I allocations are required to pay a proportional share of the project's water supply storage capital and interest costs within two years of the effective date of the allocation, and to pay annually a proportional share of operating costs.

(c) Holders of Level II allocations are required to pay a proportional share of the project's water supply storage interest costs.

Statutory Authority G.S. 143-215.3 (a) (1); 143-354 (a) (11); 143B-282.

.0506 RECIPIENTS' REQUIREMENTS

(a) Holders of Level I allocations must provide documentation meeting the requirements of the North Carolina Environmental Policy Act, G.S. 113A-1 thru 113A-10, at the time the holders propose to build facilities to use water from Jordan Lake. Such documentation shall include the environmental impacts of the

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proposed withdrawal, treatment, distribution, and disposal of the holders' allocated water.

(b) Local governments must install and maintain suitable meters for the measurement of water withdrawn, report these withdrawals to the department on a monthly basis, and obtain the department's approval for the design, location, and installation of associated withdrawal facilities.

(c) Holders of Level I and Level II allocations must pay the required capital, interest, and operating costs when due.

Statutory Authority G.S. 113A-1 through 113A-10; 143-215.3 (a) (1); 143-354 (a) (11); 143B-282.

.0507 LOSS OF ALLOCATION

(a) Level I allocations will be reviewed for possible reassignment if the recipient does not begin to withdraw water within five years of the effective date of allocation or is not using and withdrawing the water as proposed in the application.

(b) Level I and Level II allocations will be rescinded upon failure by the local government to meet the regulation requirements in .0506 (a), (b), and (c).

(c) The commission may adjust, reassign, or transfer interests in water supply storage held by local governments, if indicated by an investigation of needs or changes in the project's water supply storage capacity. Capital, interest, and operating costs will be equitably adjusted to reflect the allocation recipients' proportion of total capacity.

Holders of Level I and Level II allocations will receive appropriate refunds for any payments made if their allocations are adjusted, reassigned, or otherwise amended with the approval of the commission. Rescinded allocations will not be refunded.

Statutory Authority G.S. 143-215.3 (a) (1); 143-354 (a) (11); 143B-282.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management

intends to amend regulations cited as 15 NCAC 21H .0101 - .0115; .0117 - .0118; .0122 - .0124; .0201 - .0206; .0208 - .0209; .0211 - .0213; .0215; .0218; .0901 - .0910; .0912 - .0915; adopt 15 NCAC 21H .0127 - .0141; .0219 - .0221; .0916 - .0917; repeal 15 NCAC 21I .0210; .0214; .0216; .0911.

The proposed effective date of this action is October 1, 1987.

The public hearing will be conducted at 1:00 p.m. on May 19, 1987 at Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Comments, statements, data, and other information may be submitted in writing prior to or up to 30 days following the public hearing or may be presented orally at the hearing. So that all persons desiring to speak may do so, lengthy statements may be limited at the discretion of the hearing officer. Oral presentations which exceed three minutes must be accompanied by a written copy which will be filed with the hearing clerk at the time of registration. Written comments should be sent to Mr. Dennis Ramsey, DEM, WQ, P. O. Box 27687, Raleigh, North Carolina 27611.

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - WASTEWATER DISCHARGES TO THE SURFACE WATERS

.0101 PURPOSE

(a) These Regulations implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing the requirements and procedures for application and issuance of state NPDES permits for a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and, for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to

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the surface waters of the state). These Regulations also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for regulations for permits issued by local pretreatment programs).

(b) Regulations and Statutes referenced in this Section may be found at the Division of Environmental Management, Water Quality Section's offices at the following locations:

- Permitting and Engineering Unit, Archdale Building, 512 N. Salisbury St., Raleigh, N.C.
- Raleigh Regional Office, 3800 Barrett Dr., Raleigh, N.C.
- Asheville Regional Office, 159 Woodfin St., Asheville, N.C.
- Mooresville Regional Office, 919 N. Main St., Mooresville, N.C.
- Fayetteville Regional Office, Wachovia Bldg. Suite 714, Fayetteville, N.C.
- Washington Regional Office, 1502 N. Market St., Washington, N.C.
- Wilmington Regional Office, 7225 Wrightsville Ave., Wilmington, N.C.
- Winston-Salem Regional Office, 8003 North Point Blvd., Winston-Salem, N.C.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.1.

.0102 SCOPE

These Regulations apply to all persons discharging or proposing to discharge waste to the surface waters of the state; discharging or proposing to discharge waste requiring pretreatment to a treatment works of another; constructing or proposing to construct a treatment or pretreatment works with such a discharge; operate or propose to operate a treatment works with such a discharge. provided that This regulation does not apply to those persons who have obtained a permit from a local pretreatment program control authority, whose

pretreatment program was approved in accordance with Section .0900 of this Subchapter and authorized to issue such permits. , do not require a separate state permit for pretreatment facilities.

Statutory Authority G.S. 143-215.1; 143-215.3 (a) (1); 143-215.3 (a) (14).

.0103 DEFINITION OF TERMS

For the purpose of these Regulations the following definitions shall apply:

- (1) "Commission" means the Environmental Management Commission of the Department of Natural Resources and Community Development or its successor.
- (2) "Committee" means the NPDES committee of the Environmental Management Commission.
- (3) ~~(5)~~ "Director" means the Director of the Division of Environmental Management, Department of Natural Resources and Community Development or his delegate.
- (4) ~~(3)~~ "EPA" means the United States Environmental Protection Agency.
- (5) ~~(4)~~ "NPDES" means the National Pollutant Discharge Elimination System.
- (6) ~~(7)~~ "New Source" shall apply to any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards and/or pretreatment standards for new sources by the Environmental Protection Agency.
- (7) ~~(8)~~ "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
- (8) "Permit" means an NPDES permit or pretreatment permit.
- (9) "POTW" means Publicly Owned Treatment Works.
- (10) "Pretreatment Standard" means any regulation containing pollutant discharge limits for

- indirect dischargers for ensuring compliance with section 30F(b) and (c) of the Clean Water Act. This term includes prohibitive discharge limits and local sewer use ordinance limits.
- (11) "Primary Industry" means an industry listed in 40 CFR 122, Appendix A.
- (12) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (13) (a) "Staff" means the staff of the Division of Environmental Management, Department of Natural Resources and Community Development.
- (14) "General Permit" means an NPDES "permit" issued under 40 CFR 122 authorizing a category of discharges which all involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, require the same or similar monitoring, and in the opinion of the director are more appropriately controlled under a general permit than under individual permits.
- (15) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and dewatering performed to lower the water table to allow mining in an area.
- (16) "Notice of Intent" means formal written notification to the division that a proposed discharge is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (17) "Oil Terminal Storage Facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (18) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blow-down waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (19) "Sand Dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (20) "Seafood Packing Facility" means a business which is primarily engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (21) "Swimming Pool Filter Backwash" means normal filter backwash water from both public and private swimming pools.
- (22) "Trout Farm" means a facility for the commercial production of trout.
- (23) "Water Filtration Facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

Statutory Authority G.S. 143-213; 143-215.3 (a) (1).

.0104 REQUIRED PERMITS

(a) For purpose of this state's NPDES program, the discharge of waste or any pollutant shall be unlawful except as in compliance with N.C.G.S. 143-215.1 and these Regulations. No person shall do any of the things or carry out any of the activities contained in N.C.G.S. 143-215.1(a)(1) thru (10) until or unless such person shall have applied for and shall have received from the commission (or if applicable, a local

pretreatment authority), a permit therefore and shall have complied with such conditions, if any, as may be prescribed by such permit.

(b) In accordance with the requirements of NCGS 143-215.1(c)(2)b, the commission hereby delegates the authority to issue permits required by NCGS 143-215.1(a)(1) for discharges to the surface waters of domestic waste for single family dwellings of 1,000 gallons per day or less to the local health departments in each of the state's 100 counties. These permits must be issued in accordance with the requirements of NCGS 143-215.1, and it is the responsibility of the local health department to ensure that permit compliance is maintained. This delegation shall be effective as of January 1, 1988. Upon the effective date of this regulation, copies of all existing single family permits will be transferred from the Division of Environmental Management to the county health departments in which the discharges are located.

(b) No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the commission (or, if applicable, a local pretreatment authority) a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

- (1) make any outlets into the waters of the state;
- (2) construct or operate any sewer system, treatment works, or disposal system within the state;
- (3) alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the state;
- (4) increase the quantity of waste discharged through any outlet or processed in any treatment works, or disposal system to an extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of

the receiving waters to the extent of violating any of the standards applicable to such water, or to any extent beyond such minimum limits as the commission may prescribe, by way of general exemption from the provisions of this Paragraph, by its official regulations;

- (5) change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;
- (6) cause or permit any waste, directly or indirectly to be discharged to or in any manner intermixed with the waters of the state in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the commission under the provisions of this article;
- (7) cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;
- (8) enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

Statutory Authority G.S. 143-215.1 (a); 143-215.3 (a) (1).

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.0105 APPLICATION: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Subdivisions (c) and (d) of this Regulation, any person discharging or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an NPDES application accompanied by the processing fee described herein for each application in the form of a check or money order made payable to N.C. Department of Natural Resources and Community Development. Short Form A (municipal), B (agriculture), C (manufacturing and mining), or D (commercial) as appropriate in accordance with the instructions provided with such forms. The NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A: all municipal systems greater than or equal to 1.0 MGD and any municipal system receiving industrial waste from a primary industry

Short Form A: any municipal system not covered by Std. Form A

Short Form B: All agriculture related discharges

Std. Form C: All primary industries (as listed in 40 CFR 122.21, Appendix A) and all other industrial process and commercial discharges greater than or equal to 50,000 GPD except cooling waters, cooling tower blowdown, and boiler blowdown

Short Form C: Cooling waters, cooling tower blowdown, boiler blowdown, and

any industrial or commercial discharges not covered under Std. Form C, Short Form E, or Short Form F.

Short Form D: All domestic waste discharges not covered by Std. Form A and Short Form A.

Short Form E: Notice of Intent to be covered by general permit for once-through non-contact cooling waters with no biocidal additives, statewide.

Short Form F: Notice of Intent to be covered by general permit for mine dewatering facilities, statewide.

Short Form G: Notice of Intent to be covered by general permit for water filtration facilities, statewide.

Short Form H: Notice of Intent to be covered by general permit for swimming pool filter backwash facilities, statewide.

Short Form I: Notice of Intent to be covered by general permit for seafood packing facilities, statewide.

Short Form J: Notice of Intent to be covered by general permit for oil terminal storage facilities discharging to water supply (WS-III) waters.

Short Form K: Notice of Intent to be covered by general permit for oil terminal storage facilities discharging to

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Short Form L: Notice of Intent to be covered by general permit for sand dredges, statewide.

Short Form M: Notice of Intent to be covered by general permit for trout farms, statewide.

Short Form N: Notice of Intent to be covered by general permit for aquifer restoration.

The pretreatment application forms to be used will be supplied by the Division.

All A nonrefundable processing fee of one hundred dollars (\$100.00) shall be submitted with each application or Notice of Intent, and a public notice fee of fifty dollars (\$50.00) shall be submitted with each application, except for general permits, processed by the division including requests for name changes, and modifications to the permit requested by the applicant. If the permit does not go to public notice, the public notice fee will be refunded to the applicant. No processing fee will be charged for modification of unexpired permits when the modifications are initiated by the director to correct processing errors, to change permit conditions, or otherwise to implement new standards. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation. An application ~~s are~~ is incomplete until required processing fees ~~are~~ public notice fees and adequate information to evaluate the proposed facility have been received. and Incorrect or incomplete applications may be returned to the applicant. The processing fee is as follows:

Flow (gpd)	Fee
Less Than 999	\$ 25.00
1,000 or 4,999	\$ 50.00
5,000 - 49,999	\$ 75.00
50,000 or more	\$100.00

(b) Applicants for projects requiring construction of control facilities shall in addition to

applications required in subdivision (a) of this Rule, file, in triplicate, an engineering proposal setting forth the following information:

(1) a description of the origin, and type, and flow of waste which is proposed to be discharged. Flow shall be determined in accordance with Rule 2H .0206(1) of this chapter.

(2) a summary of waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure that the most environmentally sound alternative was selected from the reasonably cost effective options;

(3) (2) a narrative description of the proposed treatment works including size type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components with well established treatment capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature of waste or degree of treatment needed to meet the permit limits;

(3) a projected evaluation of the effect of the discharge upon the receiving waters,

(4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);

(5) (4) a scale location plan, of the site showing location of the proposed treatment works and the proposed point of discharge;

- (5) a plot plan of the site of the proposed treatment works.
 (6) special studies or modelling may be required in cases where the impacts of the discharge cannot be readily determined by the division.

(c) Applications for NPDES permit renewals ~~may~~ shall be accomplished ~~by letter by filing the appropriate application form as listed in (a) above,~~ with the processing fee described herein in the form of a check or money order made payable to N.C. Department of Natural Resources and Community Development, ~~provided the applicant contemplates no change in the wastewater volume or characteristics allowed by the permit about to expire.~~ A renewal application which contemplates any change in the wastewater volume or characteristics allowed by the existing permit ~~must be submitted in accordance with paragraph (a) of this Rule at least 180 days prior to expiration of a NPDES permit.~~ The notice and public participation procedures set in regulations .0109 and .0111 of this section shall be followed for each request for reissuance of ~~an NPDES~~ the permit. All applications are incomplete until required processing fees are received, and may be returned to the applicant. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation. The processing fee for NPDES Permit Renewal issued by the division is as follows: the same as listed in (a) above.

Flow (gpd)	Fee
Less Than 999	\$ 25.00
1,000 - 4,999	\$ 50.00
5,000 - 49,999	\$ 75.00
50,000 or more	\$100.00

(d) Complete NPDES applications which have been previously filed with Region IV, EPA, shall be considered an application for state NPDES permit, if they have not been denied and, the discharge described in the application has not substantially changed in nature, volume or frequency.

(d) (e) Applications for permits for

pretreatment facilities shall be made in triplicate upon forms approved by the director and submitted along with applicable supporting information to the division at the addresses given in subdivision (a) of this regulation.

(e) (4) Applicants for permits for new ~~source~~ discharges which propose to discharge industrial process wastewater in excess of 100,000 gallons per day or 10 MGD of cooling water or any other proposed discharge of 1 MGD or greater to the surface waters shall file, in addition to the applications and supporting documents required in Subsections (a) and (b), an ~~environmental~~ assessment sufficient to describe the impact of the proposed action upon the waters of the area. As a minimum, the ~~environmental~~ assessment shall contain the following:

(1) Cover Sheet. The cover sheet shall indicate the nature of the proposed action, the name of the permit applicant, the date of the assessment and the signature of the responsible company official.

(2) The assessment shall identify, develop, and analyze the pertinent issues concerning the impact on the aquatic environment as follows:

(A) Background and description of the proposed ~~new source; discharge:~~ The assessment shall describe the proposed ~~new source discharge~~, its product or purpose, its location and its construction and operation time schedule in as broad a context as is reasonable. The relationship of the ~~new source~~ project to other projects and proposals directly affected by or stemming from the construction and operation of the ~~new source discharge~~ should be discussed. Maps, photos, or artist sketches should be incorporated if available to help depict the environmental setting and, if not available, supporting documents should be referenced.

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- (B) Alternatives available for treatment or other control methods should be described, developed and objectively weighed against the proposed new source discharge. The analysis should be sufficiently detailed to allow for comparative evaluation of impacts on the aquatic environment. The analysis of alternatives shall be compared to the existing aquatic environment.
- (C) The assessment should discuss the primary and secondary environmental impacts both beneficial and adverse. The scope of the description should include both short term and long term impacts.
- (D) Adverse impacts which cannot be avoided should be described in detail and proposed remedial or protective measures which will be taken to minimize such impacts should be described. This shall be a description of the extent to which the proposed activity involves trade-offs between short term environmental gains at the expense of long term losses or vice-versa and the extent to which proposed actions may foreclose future options. The assessment must adequately address irreversible and irretrievable commitments of aquatic resources which will result if the new source permit is issued.
- (3) Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this subsection provided aquatic impacts are adequately addressed.
- (4) No permit shall be subject to challenge by a third party on the grounds that information required under this subsection is incomplete or insufficient.
- (f) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to the North Carolina Environmental Policy Act. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.
- (g) For NPDES permits, a full disclosure of all toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 C.F.R. 122.21 Appendix D which are adopted by reference as amended through Jan. 1 1986 and for other direct discharges as required by the director.
- Statutory Authority G.S. 143-215.1 (c); 143-215.3 (a) (1).*
- ### .0106 FILING APPLICATIONS
- (a) Permit applications accompanied by the processing fee as described in Regulation .0105 of this Section shall be filed with the Director, Division of Environmental Management, P. O. Box 27687, Raleigh, North Carolina, 27611.
- (b) All applications shall be filed at least 180 days in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to insure compliance with all legal procedures.
- (c) NPDES Permit applications filed with the director shall be signed as follows:
- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the NPDES permit application form originates;
 - (2) in the case of a partnership,

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- by a general partner and in the case of a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

Statutory Authority G.S. 143-215.1 (c); 143-215.3 (a) (1).

.0107 STAFF REVIEW AND EVALUATION

(a) The director is authorized to accept applications for the commission and shall refer all applications to the staff for review and evaluation. Additionally, the director shall refer applications for the disposal of waste into waters classified as sources of public water supply (classification "A II" WS II & III) and shellfish waters classified SA to the Division of Health Services, Department of Human Resources, for review and written approval. ~~in accordance with the provisions of G.S. 143-215.1(a).~~

(b) The director or his designee shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(c) Tentative Determination and Draft Permit

- (1) The staff shall conduct a ~~treatment works, or in the case of new discharges,~~ a site investigation including an on-site inspection and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. ~~for the discharge~~
- (2) If the staff's tentative determination in Paragraph (1) of this Subdivision is to issue the NPDES permit, it shall if necessary make the following additional determinations in writing:
- (A) proposed effluent

limitations for those pollutants proposed to be limited;

(B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the NPDES application.

(3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) of this Subdivision into a draft NPDES permit.

(d) In the case of permits for which notice of intent is given on short forms E through N as described in rule .0105(a) of this Article, a general permit shall be prepared and issued directly to the applicant in lieu of any other acknowledgement. If the Notice of Intent is unacceptable, it will be returned to the applicant with a brief explanation.

Statutory Authority G.S. 130-161; 143-215.1 (a); 143-215.1 (c); 143-215.3 (a) (1); 143-215.3 (a) (4).

.0108 FACT SHEETS

(a) For all discharges which do not qualify for a general permit and which have a total volume of 500,000 or more gallons on any day, or as may be determined by the director, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) a sketch or detailed description of the location of the discharge described in the NPDES application;
- (2) a quantitative description of the discharge described in the NPDES application which includes at least the following:
- (A) the rate or frequency of

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- the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
- (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; and
- (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition;
- (3) the tentative determinations required under Regulation .0107 of this Section;
- (4) a brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and
- (5) a fuller description of the procedures for the formulation of final determinations than that given in the public notice including:
- (A) the 30-day comment period required by Regulation .0110 of this Section,
- (B) procedures for requesting a public ~~hearing meeting~~ and the nature thereof, and
- (C) any other procedures by which the public may participate in the formulation of the final determinations.
- (b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet. Any person may also request and receive all fact sheets as they are published by the department. Persons requesting all fact sheets shall be included in a special fact sheet mailing list. Requests for all fact sheets shall be renewed by July 1 of each year or the name of the person making the request shall be dropped from the fact sheet mailing list. Appropriate notice shall be given by the director prior to dropping persons from the fact sheet mailing list.

Statutory Authority G.S. 143-215.1 (c) (2) (i); 143-215.3 (a) (1).

.0109 PUBLIC NOTICE

- (a) Notice of Application
- (1) Public notice of each complete NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the director at least 45 days prior to any proposed final action:
- ~~(A) by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet, point source or disposal system lies; and~~
- (A) (B) by publishing the notice one time in a newspaper having general circulation in said county; and
- (B) (C) by mailing to all persons or agencies listed in Subdivision (c) of this Regulation.
- (2) The notice shall set forth at least the following:
- (A) name, address, phone number of agency issuing the public notice;
- (B) name and address of each applicant;
- (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;
- (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
- (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
- (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and

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- (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.
- (3) Public notice of NPDES applications for discharges from single family dwellings of 1,000 gallons per day or less shall not be required.
- (4) Public notice for those activities covered by general permits shall not be required.
- (b) Notice of Hearing Public Meeting
- (1) Notice of public hearing meeting on any NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the director at least 30 days prior to the date of the hearing meeting:
- (A) ~~by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet, point source, or disposal system lies;~~
- (A) ~~(B)~~ by publishing the notice one time in a newspaper having general circulation in said county;
- (B) ~~(C)~~ by mailing to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and
- (C) ~~(D)~~ by mailing to any person or group upon request.
- (2) The contents of public notice of any hearing meeting shall include at least the following:
- (A) name, address, and phone number of agency holding the public hearing meeting ;
- (B) name and address of each applicant whose application will be considered at the hearing meeting ;
- (C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
- (D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;
- (E) information regarding the time and location for the hearing meeting ;
- (F) the purpose of the hearing meeting ;
- (G) a concise statement of the issues raised by the persons requesting the hearing meeting ;
- (H) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and
- (I) a brief description of the nature of the hearing meeting including the rules and procedures to be followed; The notice shall also state that additional information is on file with the Division of Environmental Management, Department of Natural Resources and Community Development at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.
- (c) Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the director shall mail such notice to any such person. The director shall also give notice to the following for NPDES permits :
- (1) State water pollution control

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- agency for the states of Virginia, South Carolina, Tennessee, and Georgia;
- (2) Appropriate district engineer, U.S. Army Corps of Engineers;
 - (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Federal Water Pollution Control Act Clean Water Act in approved 208 areas;
 - (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Federal Water Pollution Control Act Clean Water Act ;
 - (5) North Carolina Department of Human Resources, Division of Health Services, and appropriate local health agency; and
 - (6) Any other federal, state or local agency upon request ; and
 - (7) The local governmental unit or units having jurisdiction over specific residential projects as specified in N.C.G.S. 143-215.1(d1).
- (d) The applicant shall pay to the Division of Environmental Management the cost of advertising the public notice or notices required by Subdivisions (a) and (b) of this Regulation. Permits shall be withheld until such costs have been paid.

Statutory Authority G.S. 143-215.1 (a) (1); 143-215.1 (c); 143-215.4 (a); 143-215.4 (c).

.0110 RESPONSE TO PUBLIC NOTICE

(a) Any person who desires a public hearing meeting on any NPDES permit application shall so request in writing to the director within 30 days following the publication date of the notice of application. The director shall consider all such requests for hearing meeting and, if he determines there is a significant public interest pertaining to water quality impacts or uses of the waters , shall issue public notice of hearing meeting.

(b) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be

considered by the director prior to taking final action on the application.

Statutory Authority G.S. 143-215.1 (c) (3); 143-215.3 (a) (1); 143-215.3 (a) (3); 143-215.3 (a) (4).

.0111 MEETINGS AND HEARINGS

(a) Public Hearings Meetings.
The director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public hearing meeting with respect to NPDES permit applications. Any such request or petition for public hearing meeting shall be filed within 30 days of the date of notice and shall indicate the interest of the party filing such request and the reasons why a hearing meeting is warranted. The director shall hold a hearing meeting if there is a significant public interest (including the filing of requests of petitions for such hearing meeting) in holding such a hearing meeting. Instances of doubt shall be resolved in favor of holding the hearing meeting. Any hearing meeting brought pursuant to this Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the director, and may, as appropriate, consider related groups of permit applications.

(b) Adjudicatory Hearings. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, shall have the right to an adjudicatory hearing before a hearing officer designated by the director upon making written demand, identifying the specific issues to be contended, to the director within 30 days following notice of final decision to deny or grant the permit. Unless such demand is made, the decision on the application shall be final and binding.

(c) Appeal Hearings. Any decision of a hearing officer for permits processed by the Division of Environmental Management made

as a result of an adjudicatory hearing held under Subdivision (b) of this Regulation may be appealed by any party, to the committee upon filing a written demand within 10 days of receipt of notice of the decision. Hearings held under this Subdivision shall be conducted in accordance with N.C.G.S. 143-215.5.

Statutory Authority G.S. 143-215.1 (c) (1); 143-215.1 (e); 143-215.3 (a) (1); 143-215.3 (a) (3); 143-215.3 (a) (4); 143-215.5.

.0112 FINAL ACTION ON PERMIT APPLICATIONS

(a) The director shall take final action on all applications not later than 60 days following notice of application or, if a public hearing is held, within 90 days following the closing of the record of the hearing or in the case of a pretreatment permit 90 days after the receipt of a complete application.

(b) The director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;
- (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards and other legally applicable requirements;
- (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Regulation .0114(a) of this Section;
- (4) suspend a permit pursuant to Regulation .0114(a) of this Section;
- (5) deny a permit application:
 - (A) where necessary to effectuate the purposes of G.S. 143-215.1, Article 21 Chapter 143,
 - (B) for a discharge prohibited by G.S. 143-214.2(a),
 - (C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,
 - (D) for a discharge to which the regional administrator of EPA has objected as provided in Section 402(d) of the

Federal Water Pollution Control Act Amendments of 1972 (PL 92 500) Clean Water Act as amended,

(E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the 1972 FWPCA Amendments Clean Water Act as amended.

(c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements. No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations of all effected states.

(d) The director shall submit to the commission at its regular meetings a report which contains the action taken by the division with respect to any permit application since the last commission meeting.

(e) Permits shall be issued or renewed for a period of time deemed reasonable by the director but except in no case shall the permits be issued for a period to exceed five years.

Statutory Authority G.S. 143-214.2 (a); 143-215; 143-215.1 (b); 143-215.1 (c) (4); 143-215.1 (c) (5); 143-215.2 (a); 143-215.3 (a) (1); 143-215.3 (a) (3); 143-215.3 (a) (4).

.0113 NOTIFICATION OF APPLICANTS

The director shall notify an applicant by certified or registered mail of the final decision of his the applicant's permit application. Notifications of denial shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion of the director will be required to obtain the permit.

Statutory Authority G.S. 143-215.1 (a); 143-215.3 (a) (1); 143-215.3 (a) (4).

.0114 MODIFICATION AND REVOCATION OF PERMITS

(a) Any permit issued pursuant to

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this Regulation is subject to revocation, ~~suspension~~ or modification in whole or part for good cause including but not limited to:

- (1) violation of any terms or conditions of the permit;
 - (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
 - (3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; and
 - (4) refusal of the permittee to permit the director or his authorized representative upon presentation of credentials:
 - (A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,
 - (B) to have access to any copy and records required to be kept under terms and conditions of the permit,
 - (C) to inspect any monitoring equipment or method required in the permit, or
 - (D) to sample any discharge of pollutants.
- (b) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows. The director may remove this exemption on a case by case basis.
- (1) modifications of the monitoring program contained in the permit,
 - (2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,
 - (3) a single modification of any compliance schedule not in excess of four months,
 - (4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,
 - (5) modifications to include or amend pretreatment program requirements.
- (c) A request for a modification

or revocation by the permittee shall constitute a waiver of the 60 day ~~public~~ notice required by G.S. 143-215.1(b) for modifications or revocations.

Statutory Authority G.S. 143-215.1 (b) (3); 143-215.3 (a) (1).

.0115 PUBLIC ACCESS

(a) All records, reports and information required to be submitted to the commission or the director; any public comment on these records, reports or information; and the draft and final permits shall be disclosed to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets.

(b) The director is authorized to determine information which is entitled to confidential treatment. In the event the director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.

(c) The director shall:

- (1) provide facilities for the inspection of information relating to NPDES permit applications and permits,
- (2) insure that ~~division~~ employees the staff handle request for such inspections promptly,
- (3) insure that copying machines or devices are available for a reasonable fee.

Statutory Authority G. S. 132-6; 143-215.3 (a) (1); 143-215.3 (a) (2); 143-215.3 (a) (4); 143-215.65.

.0117 INVESTIGATIONS: MONITORING; AND REPORTING

(a) ~~Employees~~ Staff of the Department of Natural Resources and Community Development are authorized to conduct any investigations as provided in G.S.

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143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted regulation of the commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of regulations in Section 15 NCAC 2B .0500. This Regulation contains the requirements for monitoring and reporting the quantity and quality of waste discharges to and their effects upon the water resources of the state. It also contains the required tests and measurements, the location of sampling points, and the frequency of the monitoring and reporting for the following major standard industrial groups:

SIC NUMBER	MAJOR PRODUCTS OR SERVICES
~~0200-0299~~	~~Agricultural Production Livestock~~
~~1400-1499~~	~~Mining~~
~~2000-2099~~	~~Food and Beverage Processing~~
~~2100-2199~~	~~Tobacco Processing~~
~~2200-2299~~	~~Textile Processing~~
~~2400-2499~~	~~Lumber & Wood Products Except Furniture~~
~~2500-2599~~	~~Manufacturing of Furniture and Fixtures~~
~~2600-2699~~	~~Paper & Allied Products~~
~~2800-2899~~	~~Chemical & Allied Products~~
~~2900-2999~~	~~Petroleum Refining & Related Industries~~
~~3100-3199~~	~~Leather & Leather Products~~
~~3400-3499~~	~~Fabricated Metal Products Except Ordinance, Machinery & Transportation Equipment~~
~~3500-3599~~	~~Machinery Except Electrical~~
~~3600-3699~~	~~Electrical Machinery,~~

~~Equipment and Supplies~~
~~4600-4699 Pipeline~~
~~4900-4999 Transportation~~
~~Electric, Gas, & Sanitary Services~~
~~7200-7299 Personal Services~~
~~7300-7399 Miscellaneous~~
~~Business Service~~
~~7500-8599 Automobile Repairing Services & Garage~~
~~9999 Domestic Sewage~~

Statutory Authority G.S. 143-215.1 (b) (1); 143-215.3 (a) (1); 143-215.3 (a) (2); 143-215.3 (a) (4); 143-215.3 (a) (7); 143-215.3 (a) (9); 143-215.63.

.0118 EFFLUENT LIMITATIONS AND STANDARDS

Any state NPDES permit or state permit for a pretreatment facility will contain effluent limitations and standards required by EMC Regulation Adopting Effluent Limitations and Guidelines for Wastewater Discharges to Surface Waters of North Carolina adopted on March 20, 1975 15 NCAC 2B .0400 and the Clean Water Act as amended, by the commission or as may be future amended by the commission. That regulation contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Federal Water Pollution Control Clean Water Act. For effluent limited stream segments, the regulation adopts by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the regulations provide that effluent limitations be calculated by the staff and approved by the director, to comply with Section 301(b)(1)(C) of the federal act.

Statutory Authority G.S. 143-213.23; 143-214 (c); 143-215; 143-215.1 (b) (1); 143-215.3 (a) (1).

.0122 CONCENTRATED ANIMAL FEEDING OPERATIONS

Part 122.23 of Title 40 of the Code of Federal Regulations, as revised as April 1, 1983, entitled "Concentrated

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Animal Feeding Operations", is hereby adopted as part of the Regulations of this Section.

Statutory Authority G.S. 143-213 (24); 143-215; 143-215.1; 143-215.3 (a) (1).

.0123 REQUIREMENTS: EVALUATING FEEDLOT PERMIT APPLICATIONS

(a) Guidelines. Upon identifying any concentrated animal feeding operation or animal feeding operation that the staff has reason to believe should or could be regulated under this permit program, the staff shall conduct an on-site inspection of such operation, and shall make the following determinations as a result thereof:

(1) For a concentrated animal feeding operation as described in 40 CFR 122.23(b)(3) and Paragraph (a) of Appendix B of those regulations, does a discharge of pollutants occur to the surface waters of the state by any means, as a result of any ~~other than a 25 year, 24 hour~~ rainfall event ? less severe than a 25-year, 24 hour event.

(2) For a concentrated animal feeding operation as described in 40 CFR 122.23(b)(3) and Paragraph (b) of Appendix B of those regulations;

(A) Does a pollutant discharge occur to the surface waters of the state through a man-made ditch, flushing system, or similar man-made device; or

(B) Does a pollutant discharge occur to the surface waters of the state which originate outside of and pass over, across, through, or otherwise come in contact with animals confined in the operation, as a result of any ~~other than a 25 year, 24 hour~~ rainfall event ? less severe than a 25-year, 24 hour event.

(3) Case-by-Case Determination

(A) For an animal feeding operation not otherwise falling within the definition provided in 40 CFR 122.23(b)(3):

(i) Does a pollutant

discharge occur to the state's surface waters through a man-made ditch, flushing system, or similar man-made device; or

(ii) Does a pollutant discharge occur to the state's surface waters which originate outside of and pass over, across, through, or otherwise come into direct contact with animals confined in the operation as a result of any ~~other than a 25 year, 24 hour~~ rainfall event ? less severe than a 25-year, 24 hour event.

(B) If the staff determines that a discharge occurs under either (3)(A) (i) or (3)(A) (ii) of this Paragraph, then such an animal feeding operation may be designated by the Director, Division of Environmental Management, as a concentrated animal feeding operation. In making such designation, the director shall consider the following factors:

(i) The size of the animal feeding operations; the amount of waste therefrom reaching the state's surface waters;

(ii) The operation's location relative to the surface waters of the state;

(iii) The means of conveyance of animal wastes or process waste waters into the surface waters of the state;

(iv) The degree of slope, nature of vegetation, extent of rainfall, and other factors relative to the likelihood or frequency of discharge of animal wastes and process waste waters into the state's surface waters;

(v) Other factors relative to the significance of the pollution problem sought to be regulated;

(vi) Does a discharge of pollutants occur which results in a violation of water quality standards, as

a result of any ~~other than a 25 year, 24 hour storm rainfall event~~ less severe than a 25-year, 24 hour event.

(b) Notice to Apply for Permit.

If the field determination verifies that a discharge from an animal feeding operation or concentrated animal feeding operation occurs under any of the conditions listed in Paragraph (a)(1) to (3) of this Rule, the director shall give written notice to the owner or operator of the concentrated animal feeding operation, that he must submit an application for a permit. The notice shall specify that if the owner or operator can permanently eliminate a discharge of pollutants to the surface waters of the state, by such minor changes as can be affected within 60 days of the receipt of notice to submit a permit application (such as, but not limited to, diversion of outside drainage from pen areas, modifications to lagoons, closing off drainage ditches) a permit application will not be required. If modifications necessary to eliminate permanently discharges of pollutants to surface waters of the state cannot or are not completed within 60 days of receipt of notice, a permit application must be submitted.

(c) Permit Applications. Permit applications as required by 40 CFR 122. ~~23(a)~~ 21 will be available in ~~county extension and the Division of Environmental Management regional engineers' environmental operations section~~ offices. On determination that an application should be submitted, the applicant ~~should~~ shall forward a completed application with supporting information required by Rules .0105 to .0109 of this Section. Applications with supporting documentation are to be mailed to the Director, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611. On receipt of the application, ~~the regional engineer, accompanied by a representative of the U.S. or N.C. Departments of Agriculture, a representative of the Division of Environmental Management~~ will conduct an

inspection to determine whether a permit is required. If a permit is required, the application will be processed. If not, it will be returned without action. Those concentrated animal operations that can alleviate the requirement to have a permit through minor modifications to facilities will be given 60 days to make such modifications prior to processing the permit application. On completion of required modifications to facilities, the permit application will be returned with written confirmation that the concentrated animal operation is in compliance with these Regulations.

(d) Methodology for Establishing a Potential for a Discharge ~~Other Than the 24 Hour, 25 Year Rainfall Event~~ as a Result of Any Rainfall Event Less Severe Than a 25-year, 24 Hour Event. The staff site evaluation shall include soil characteristics of the feedlot and of the land area lying between the feedlot and the receiving stream; slope and other topographic characteristics of the feedlot and the area between the feedlot, and the receiving stream; and the total drainage area. Using the results of the site evaluation, the staff shall use either the "rational method for determination of runoff" or the "SCS method for determination of runoff" to establish whether a discharge occurs at rainfall events of less than the 24-hour, 25-year rainfall.

(e) Impact Evaluation. Utilizing the results of the site evaluation and the runoff evaluation required in Paragraph (d) of this Rule, the staff shall through mathematical modeling determine whether pollutants discharged as a result of rainfall runoff will cause a violation of water quality standards at flows in existence during the runoff period.

(f) Final Determination and Fact Sheet. Upon a final determination that a permit is required, the staff shall prepare a fact sheet which delineates the reasons which have been established for requiring the permit, the corrective actions if any necessary to control the discharge of pollutants, and an implementation schedule for completing such

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actions. If no corrective actions are required, the fact sheet shall specifically state that none are required and provide the justification for not requiring corrective actions. Upon completion of the fact sheet, the staff shall prepare an NPDES draft permit containing a description of needed corrective actions and a schedule for implementation and process the permit in accordance with Rule .0108 of this Section.

Statutory Authority G.S. 143-213 (24); 143-215; 143-215.1; 143-215.3 (a) (1) (4).

.0124 RELIABILITY

All facilities ~~discharging to waters assigned B or SB classification~~ shall provide adequate reliability measures, disinfection, and adequate standby systems which, in the opinion of the director, will insure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for ~~primary recreation usage~~. their best intended uses. ~~These requirements shall also apply to facilities discharging upstream of B or SB waters, if an interruption in disinfection would render the waters in the B or SB segment unsafe for primary recreation usage.~~ The reliability measures shall include the following:

- (1) For facilities with a design capacity of 10,000 gpd or greater parallel treatment units, capable of handling the design flow even with the loss of one unit, except that treatment systems based solely on gravity flow, and treating intermittent waste flows with adequate storage to prevent discharges during maintenance do not require parallel units; and
- (2) at least one of the following:
 - (a) dual or standby power supply, or
 - (b) approval by the director that the facility:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage

capacity that no potential for overflow exists, and

(iii) can tolerate septic wastewater due to prolonged detention, or

(iv) would have de minimus impacts as a result of power failure.

(c) other measures which provide comparable assurances that surface waters will not be impacted during power failures;

(3) compliance with other reliability measures that, in the opinion of the director, are necessary in a particular case.

Statutory Authority G.S. 143-214.1; 143-215.1 (b); 143-215.3 (a) (1).

.0127 GENERAL PERMITS

(a) To the extent adopted by the commission and approved by EPA, the director is authorized to issue general permits for certain specifically defined classes of dischargers:

- (1) once-through non-contact cooling waters with no biocidal additives;
 - (2) mine dewatering facilities;
 - (3) water filtration facilities;
 - (4) swimming pool filter backwash facilities;
 - (5) seafood packing facilities;
 - (6) oil terminal storage facilities discharging to water supply (WS III) waters;
 - (7) oil terminal storage facilities discharging to waters other than those classified as water supply waters;
 - (8) sand dredges;
 - (9) trout farms;
 - (10) aquifer restoration.
- (b) General permits will only be issued into waters classified either WS or SA following review and written approval by the Division of Health Services, Department of Human Resources.
- (c) General permits will only be issued where the applicant certifies that best management practices have been installed. These general permits apply statewide except where restrictions based on the classification of receiving waters are stated.
- (d) These general permits apply

only to cooling water, and mine dewatering discharges with volumes of less than 10 MGD and to other discharges listed in this Rule with volumes of less than 1 MGD.

(c) No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(f) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using short forms E through M described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Article. If all requirements are met, a general permit may be issued. If all requirements are not met, a long form application and full application review procedure will be required.

(g) General permits will be effective for a term of five years at the end of which the division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Facilities covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the division. If the division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(h) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked by approval of the Notice of Intent to be covered by a general permit.

(i) Anyone engaged in activities covered by the general permit regulations but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

(j) If a facility has multiple discharges, not all of which can be covered by one or more general permits, it is not eligible for any general permit, and all discharges

must be approved under a single individual permit.

(k) Any applicant may choose to pursue an individual permit for any facility covered by this Rule.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0128 GENERAL PERMIT FOR COOLING WATERS

(a) Operators of once-through non-contact cooling water facilities with no chemical additives are authorized to discharge to all receiving waters except classified trout (Tr) waters in volumes less than 10 MGD and in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule. Boiler blowdown waters are included in this general permit. Nuclear and fossil fuel electric generating plants are excluded from this general permit.

(b) No monitoring is required.

(c) No chemical additives including biocides and chlorine shall be introduced into cooling waters permitted by this general permit. Use of any chemical additive will require the discharger to obtain an individual NPDES permit.

(d) The discharge shall be such as not to cause an increase in the temperature of the receiving waters of more than 2.8 degrees C or to cause the ambient water temperature to exceed 32 degrees C in the coastal plain and eastern piedmont or 29 degrees C mountains and western piedmont, with regions as defined in Rule 2B .0202 of this Chapter. In the case of discharges to tidal salt waters, the discharge shall be such as not to cause an increase in the temperature of the receiving waters by more than .8 degrees C during the months of June, July and August, nor more than 2.2 degrees C during other months, and in no case cause the ambient water temperature to exceed 32 degrees C.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0129 GENERAL PERMIT FOR MINE DEWATERING FACILITIES

(a) Operators of mine dewatering

facilities are authorized to discharge to all receiving waters except classified trout (Tr) and water supply I (WS-I) waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) Monitoring of flow, settleable matter, turbidity, and pH is required monthly.

(c) The following discharge limitations apply to discharges under this general permit:

- (1) Settleable matter: monthly average not to exceed 0.1 ml/l, daily maximum not to exceed 0.2 ml/l;
- (2) Turbidity in the effluent shall not exceed 50 NTU.
- (3) TSS: monthly average not to exceed 30 mg/l, daily maximum not to exceed 45 mg/l;
- (4) pH: between 6.0 and 9.0 standard units for freshwater or between 6.8 and 8.5 for salt waters.

(d) The permittee shall utilize sound management practices to ensure that contaminants do not enter the surface waters as a result of blasting at this site.

(e) Use of any additive chemical will require the discharger to obtain an individual NPDES permit.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0130 GENERAL PERMIT FOR WATER FILTRATION FACILITIES

(a) Operators of water filtration facilities are authorized to discharge to all receiving waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) Monitoring of settleable matter, turbidity, total suspended solids, and pH is required monthly.

(c) The following discharge limitations apply to discharges under this general permit:

- (1) Settleable matter: monthly average not to exceed 0.1 ml/l, daily maximum not to exceed 0.2 ml/l.
- (2) Turbidity in receiving water due to a discharge shall not exceed 50 NTU in streams or 25 NTU in lakes or reservoirs; if turbidity exceeds these levels

due to natural background conditions, the discharge level cannot cause any increase in turbidity in the receiving water.

(3) TSS: monthly average not to exceed 30 mg/l, daily maximum not to exceed 45 mg/l.

(4) pH: between 6.0 and 9.0 standard units in freshwater or between 6.8 and 8.5 for salt waters.

(d) The permittee shall operate the facility in a manner which will minimize the impact on receiving waters.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0131 GENERAL PERMIT FOR SWIMMING POOL FILTER BACKWASH FACILITIES

(a) Operators of swimming pool filter backwash facilities are authorized to discharge to all receiving waters except for classified Trout (Tr) waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) No monitoring is required.

(c) The following discharge limitation applies to discharges under this general permit: pH between 6.0 and 9.0 standard units in freshwater and 6.8 and 8.5 standard units in salt waters.

(d) The permittee shall take steps to limit the discharge of chlorine by following manufacturers' recommendations on the use of products containing chlorine and by controlling the discharge.

(e) Solids shall be disposed of in an approved manner.

(f) The permittee shall take adequate precaution to ensure that nuisance conditions do not occur as a result of this discharge.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0132 GENERAL PERMIT FOR SEAFOOD PACKING FACILITIES

(a) Operators of seafood packing facilities are authorized to discharge to all receiving waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

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- (b) No monitoring is required.
- (c) No process wastewater shall be discharged. Only washdown and rinse water may be discharged under this general permit.
- (d) The washdown and rinse water shall be screened prior to discharge.
- (e) There shall be no discharge of carcasses or offal to the surface water from this facility.
- (f) All solid waste shall be disposed of in an approved landfill.
- (g) Use of any additive chemical will require the discharger to obtain an individual NPDES permit.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0133 GENERAL PERMIT FOR OIL STORAGE FACILITIES DISCHARGING TO WS-III WATERS

- (a) Operators of oil storage facilities are authorized to discharge to water supply waters classified WS-III in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.
- (b) Monitoring of oil and grease in effluent is required twice monthly. Monitoring of phenols in effluent and in receiving water is required twice monthly.
- (c) The following discharge limitations apply to discharges under this general permit:
 - (1) Oil and grease: monthly average not to exceed 30 mg/l, maximum not to exceed 60 mg/l.
 - (2) Phenols: average in discharge shall not cause instream concentration of phenols to be greater than 1.0 ug/l.
- (d) The permittee shall maintain a list of all oils and toxic and hazardous substances used or stored at the facility, all potential sources of spill and leaks of these materials, a method for containment, a description of training, inspection and security procedures, and emergency response measures to be taken in the event of a discharge to surface waters. The list shall be maintained at the plant site and shall

be available for inspection by EPA or division personnel.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0134 GENERAL PERMIT FOR OIL STORAGE FACILITIES DISCHARGING TO WATERS CLASSIFIED OTHER THAN WS-I, WS-II OR WS-III

- (a) Operators of oil storage facilities are authorized to discharge to waters classified other than for water supply purposes in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.
- (b) Monitoring is not required.
- (c) Oil and grease in discharges under this general permit shall not exceed a monthly average of 30 mg/l or a daily maximum of 60 mg/l.
- (d) The permittee shall maintain a list of all oils and toxic and hazardous substances used or stored at the facility, all potential sources of spill and leaks of these materials, a method for containment, and emergency response measures to be taken in the event of a discharge to surface waters. The list shall be maintained at the plant site and shall be available for inspection by EPA or division personnel.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0135 GENERAL PERMIT FOR SAND DREDGES

- (a) Operators of sand dredges are authorized to discharge to all receiving waters except classified trout (Tr) waters in accordance with discharge limitations, monitoring requirement, and other conditions set forth in this Rule.
- (b) Monitoring is not required.
- (c) The following discharge limitations apply to discharges under this general permit:
 - (1) Settleable matter: monthly average not to exceed 0.1 ml/l, daily maximum not to exceed 0.2 ml/l;
 - (2) Turbidity in receiving water due to a discharge shall not exceed 50 NTU in streams or 25 NTU in lakes or reservoirs; if turbidity exceeds these levels due to natural background

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- conditions, the discharge level cannot cause any increase in turbidity in the receiving water.
- (3) TSS: monthly average not to exceed 30 mg/l, daily maximum not to exceed 45 mg/l;
- (4) pH: between 6.0 and 9.0 standard units for freshwater or between 6.8 and 8.5 for salt waters.
- (d) Use of any additive chemical will require the discharger to obtain an individual NPDES permit.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0136 GENERAL PERMIT FOR TROUT FARMS

(a) Operators of trout farms are authorized to discharge in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) Monitoring is not required.

(c) The following discharge limitations apply to discharges under this general permit;

(1) Settlicable matter: monthly average not to exceed 0.1 ml/l, daily maximum not to exceed 0.2 ml/l;

(2) TSS: monthly average not to exceed 30 mg/l; daily maximum not to exceed 45 mg/l;

(d) Raceways shall be cleaned regularly in such a way as to prevent violation of water quality standards.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0137 GENERAL PERMIT FOR AQUIFER RESTORATIONS

(a) Operators of facilities for the recovery and treatment of contaminated groundwater are authorized to discharge, for a period not to exceed 180 days following issuance of the General Permit, to all receiving waters except WSI, WSII, WSIII and SA in accordance with the discharge limitations, monitoring requirements and other conditions set forth in this Rule.

(b) The applicant must demonstrate by predictive calculations accepted modeling procedures, or other methods

approved by the director that contravention of the applicable water quality standards will not occur as a result of this discharge. Furthermore, the applicant shall demonstrate by testing that there will be no acute toxicity in the wastestream and no aquatic chronic toxicity in the receiving stream.

(c) Monitoring of effluent for the toxic, hazardous or deleterious substances, which are the subject of the site-specified aquifer restoration, is required on a monthly frequency unless otherwise specified in the General Permit.

(d) General permits for aquifer restoration will only be issued in cases where it has been demonstrated to the satisfaction of the director that the threat to human health and safety or to the aquatic environment are too great to allow for the normal processing time of an NPDES Permit. If the applicant or the division determines that the restoration cannot be completed within 180 days, the applicant must file for a standard NPDES Permit at the same time that the application is filed for the general permit.

(e) Contaminated soils shall be disposed of at an approved solid or hazardous waste disposal facility.

Statutory Authority G.S. 143-215(1); 143-215(3).

.0138 SUBMISSION OF PLANS AND SPECIFICATIONS

(a) Required. After a permit has been issued by the Division of Environmental Management in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and written approval has been issued to the permittee by the Division of Environmental Management.

(b) Application.

(1) Application for approval of plans and specifications must be made in triplicate on official forms completely filled out, where applicable, and fully executed. The signature of the consulting engineer or other agent will be accepted on the

application only if accompanied by a letter of authorization.

- (2) Required sets of plans and specifications:
 - (i) regular projects -- three sets of detailed plans and specifications,
 - (ii) federal and state grants projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency; toxicity in the receiving stream.
- (3) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project.
- (4) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.
- (5) If more than one contiguous acre of land is to be uncovered by a project, documentation should be supplied verifying that the applicant has completed an erosion control plan.
- (6) A 110 volt power source and a potable water supply must be available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Section Chief.
- (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information must be provided as specified in Rule 2H .0205 of this Subchapter.

Statutory Authority G.S.
143-215.1(c)(1).

.0139 MINIMUM DESIGN REQUIREMENTS

All facilities requiring a permit

pursuant to this Section shall be designed following good engineering practice and comply with the minimum design requirements specified in Rule 2H .0206 of this Subchapter. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North Carolina unless all three of the following conditions are met:

- (1) the plans and specifications are for domestic waste from a single family dwelling with flows of 1000 gallons per day or less, and
- (2) the plans and specifications are prepared by the homeowner, and contain complete information needed to evaluate the proposed facility, and
- (3) the effluent limitations are for secondary treatment.

Statutory Authority G.S.
143-215.1(c)(1).

.0140 CERTIFICATION OF COMPLETION

Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification must be received from a professional engineer certifying that the treatment works or disposal system has been installed in accordance with the approved plans and specifications. In cases where the treatment works or disposal system was designed by a homeowner rather than a professional engineer, either the permittee or a professional engineer must submit this certification.

Statutory Authority G.S.
143-215.1(c)(1).

.0141 OPERATIONAL AGREEMENTS

Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of Environmental Management. The requirement for assurance of

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financial solvency will be made on a case by case determination.

Statutory Authority G.S. 143-215.1(d1).

SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS

.0201 PURPOSE

These regulations ~~implement~~ G.S. 143-215.1(d) by setting set forth the requirements and procedures for application and issuance of permits for sewer systems, sewer system extensions, disposal systems and treatment works, and sludge disposal systems which do not discharge to surface waters of the state. The regulations of this Section will apply to all permit applications and renewals received on or after February 1, 1976.

Statutory Authority G.S. 143-215.1; 143-215.3 (a) (1).

.0202 SCOPE

These regulations apply to all persons proposing to construct, alter, ~~or extend, or operate~~ any sewer system, treatment works or disposal system which does not discharge to surface waters of the state; ~~or operating or proposing to operate any sewer system, treatment works, or disposal system which does not discharge to surface waters of the state.~~ including systems which discharge waste onto or below land surface. However, these regulations do not apply to sanitary sewage systems which are regulated by the Department of Human Resources.

Statutory Authority G.S. 130A-335; 143-215.1; 143-215.3 (a) (1).

.0203 DEFINITION OF TERMS

The terms used ~~herein~~ in this Section shall be as defined in G.S. 143.213 except for G.S. 143-213(15) and as follows:

- (1) "Agronomist" means a person with a four year degree in agronomy or agricultural engineering from an approved college or university.
- (2) "Building" means any structure or part of a structure built for the separate shelter or enclosure of persons, animals,

chattels, or property of any kind and which has enclosing walls for at least 50 percent to its perimeter. Each unit separated from other units by a four hour fire wall shall be considered as a separate building.

- (3) "Building drain" means that part of the lowest piping of a drainage system which receives waste from inside the building and conveys it to the building sewer which begins 10 feet outside the building wall.

- (4) "Building sewer" means that part of the horizontal piping of a drainage system which receives the discharge of the building drain and conveys it to a public sewer, private sewer, or on-site sewage disposal system.

- (5) "C horizon" means the unconsolidated material underlying the soil solum, which may or may not be the same as the parent material from which the solum is formed but is below the zones of major biological activity and exhibits characteristics more similar to rock than to soil.

- (6) ~~(4) The term~~ "Director" means the Director of the Division of Environmental Management, Department of Natural Resources and Community Development or his delegate.

- (7) "Dedicated site" means a site:

- (a) to which sludge is applied at rates or frequencies greater than agronomically justifiable, or at agronomic rates where the primary use of the land is for sludge disposal and crop or ground cover production is of secondary importance, or
- (b) any sludge disposal site designated by the director.

- (5) (8) "Division" means the Division of Environmental Management, Department of Natural Resources and Community Development.

- (9) "Groundwaters" means those waters in the saturated zone of the earth.

- (10) "Industrial wastewater" means all wastewater other than sewage and includes:

- (a) wastewater resulting from

- any process of industry or manufacture, or from the development of any natural resource;
- (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants;
- (c) any combination of sewage and non-sewage wastewater.
- (11) ~~(2)~~ The term "Person" shall mean means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this state or any other state or country.
- (12) "Pollutant" means waste as defined in G.S. 143-213(18).
- (13) "Private sewer" means any part of a sewer system which collects wastewater from more than one building, is privately owned and is not directly controlled by a public authority.
- (14) "Professional engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (15) "Public or community sewage system" means a single system of sewage collection, treatment, and/or disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county, a municipality, or a public utility.
- (16) "Public sewer" means a sewer located in a dedicated public street, roadway, or dedicated public right-of-way which is owned or operated by any municipality, county, water or sewer district, or any other political subdivision of the state authorized to construct or operate a sewer system.
- (17) "Sewage" means the liquid and solid human waste, and liquid waste generated by domestic water-using fixtures and appliances, from any residence, place of business, or place of public assembly. Sewage does not include wastewater that is totally or partially industrial wastewater, or any other wastewater not considered to be domestic waste.
- (18) ~~(3)~~ The term "Sewer system" means gravity flow pipelines or conduits, eight inches in diameter or greater, pumping stations, and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.
- (19) "Sludge" means any solid, semisolid or liquid waste generated from a wastewater treatment plant, water supply treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.
- (20) "Soils scientist" means a person with a four year degree in soil science, agricultural engineering or agronomy from an approved college or university.
- (21) ~~(6)~~ The term "Staff" means the water quality section staff of the division of environmental management Division of Environmental Management, Department of Natural Resources and Community Development.
- ~~(5)~~ (22) "Subsurface ground absorption sewage disposal system" means a sewage waste disposal method relying which distributes waste beneath the ground surface and relies primarily on the soil for leaching and removal of dissolved and suspended organic or mineral materials from human wastes. Included are ground absorption sanitary sewage disposal systems serving for multiple family residences, places of business, or places of public assembly, and having a design capacity in excess of 3,000 gallons, public or community sewage systems and ground absorption systems of any capacity which are designed

- for the disposal of industrial wastes.
- (8) (23) "Surface waters" means all waters of the state as defined in G.S. 143-213(20) except underground waters.
- (4) (24) "Treatment works or disposal system which does not discharge to surface waters" means any treatment works or disposal system which is designed to:
- (a) operate as closed system with no discharge to waters of the state, or
 - (b) dispose of wastes, including residual sludges, after treatment to the surface of the land, or
 - (c) dispose of wastes through a ground subsurface absorption system.
- (7) (25) "Underground waters" or groundwaters means any and all waters beneath in the land surface of the state, including the land surface beneath surface waters of the state, subsurface including infiltration and groundwaters.

Statutory Authority G.S. 130A-335; 143-213; 143-215.3 (a) (1).

.0204 ACTIVITIES WHICH REQUIRE A PERMIT

No person shall do any of the following things or carry out any of the activities contained in N.C.G.S. 143-215.1 (a) (1) thru (10) until or unless such the person shall have applied for and has received a permit from the director or (if appropriate an approved local sewer system program) and shall have and complied with the conditions if any, as are prescribed in the permit.

- (1) make any outlets into the underground waters of the state;
- (2) construct or operate any sewer system, treatment works, or disposal system which does not discharge to surface waters;
- (3) alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system which does not discharge to surface waters;
- (4) increase the quantity of waste discharged through any outlet or processed in any treatment works

or disposal system which does not discharge to the surface waters to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving ground waters to the extent of violating any of the standards applicable to such waters, or to an extent beyond such minimum limits as the commission may prescribe, by way of general exemption from the provisions of this Subdivision, by its official regulations;

- (5) change the nature or quantity of the wastewater not discharged to surface waters in any way which would contravene any applicable water quality standards;

- (6) cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the underground waters of the state in violation of water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order, or other appropriate instrument issued or entered into by the commission pursuant to G.S. 143-214 et seq.;

- (7) cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly from a pretreatment facility to any disposal system which does not discharge to the surface waters, or to alter, extend, or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;
- (8) enter into a contract for the construction and installation of any outlet, sewer system, pretreatment facility, treatment works, or disposal system which does not discharge to surface

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waters, or for the alteration or extension of any such facilities.

Statutory Authority G.S. 130A-335; 143-215.1; 143-215.3 (a) (1).

.0205 APPLICATION: SUPPORTING INFORMATION: REQUIREMENTS

(a) Jurisdiction. Applications for sewer system extensions under the jurisdiction of a local sewer system program shall be made in accordance with applicable local laws and ordinances. Applications for permits from the division shall be made in accordance with this Rule as follows.

(b) Applications. Application for a permit must be made in duplicate triplicate on official form completely filled out, where applicable, and fully executed in the manner set forth in Regulation .0206 Regulation .0207 of this Section. A processing fee as described herein must be submitted with each application in the form of a check or money order made payable to N.C. Department of Natural Resources and Community Development. Applications may be returned if not accompanied by the processing fee. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization.

(c) Processing Fee. All applications are incomplete until required processing fees are received, and may be returned to the applicant. A non refundable processing fee of one hundred dollars (\$100.00) shall be submitted with each application. No processing fee will be charged for modification of unexpired permits when the modifications are initiated by the director to correct processing errors, to change permit conditions, or otherwise to implement new standards. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation. The processing fee is as follows: The division shall not require permit processing fees for permits issued by local sewer system programs.

Type	Fee
Sludge Handling	\$100.00
Closed or Recycle Systems	\$100.00

Gravity Sewer Extension Project	
Total Length:	
Less than 1500 feet	\$ 10.00
1500 feet - 5000 feet	\$ 25.00
Greater than 5000 feet	\$ 50.00
Delegated Municipality	\$ 10.00
Projects with Pressure Sewer or pump station	\$ 50.00
Wastewater Treatment/ Disposal Flow: (gpd):	
Less than 999	\$ 25.00
1,000 - 4,999	\$ 50.00
5,000 - 49,999	\$ 75.00
50,000 or More	\$100.00

(d) (e) Supporting Documents and Information. (1) This Subdivision Paragraph outlines those supporting documents and information which must be submitted for sewers, sewer extensions, and disposal systems and wastewater treatment works which do not discharge to the surface waters of the state. ;

(1) For all facilities:

(A) Required sets of plans and specifications:

(i) regular projects -- three sets of detailed plans and specifications signed and sealed by a professional engineer.

(ii) federal and state grants projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;

(B) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project:

(C) A general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams rivers, etc.);

(D) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal

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- system when it becomes available;
- (E) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to the North Carolina Environmental Policy Act. Permit applications for which such documentation is required will not be considered complete until supported by the required documentation.
- (F) If more than one contiguous acre of land is to be uncovered by a project, documentation should be supplied verifying that the applicant has completed or is working with the appropriate regional engineer of the Land Quality Section on the completion of an erosion control plan.
- (2) For wastewater facilities specified in G.S. 143-215.1 (d1) that are or will be jointly or commonly owned, either a copy of a properly executed operational agreement or evidence to show that the applicant has been designated as a public utility by the State Utilities Commission.
- (3) ~~(2)~~ For sewers and sewer extensions:
- (A) design flow ; including flows from branch sewers;
- (B) rate of infiltration in gallons per day per inch of pipe diameter per mile of pipe per day ;
- (C) letter of agreement from owner or proper official of treatment works accepting the wastewater, if application is not submitted by owner or proper official having charge of treatment works;
- (D) plan and profile of sewers.
- (E) specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project;
- (E) Construction of sewers and
- sewer extensions are prohibited in the following areas unless the specified determinations are made:
- (i) in a natural area designated on the State Registry of Natural Heritage Areas by a protection agreement between the owner and the Secretary of the N.C. Department of Natural Resources and Community Development, unless the EMC agrees that no prudent, feasible or technologically possible alternative exists,
- (ii) in a natural area dedicated as a North Carolina Nature Preserve by mutual agreement between the owner and State of North Carolina (Governor and Council of State), unless the EMC recommends and the Governor and Council of State agree that no prudent, feasible or technologically possible alternative exists.
- (4) ~~(3)~~ For pumping stations:
- (A) design data; calculations for pump and force main sizing;
- (B) plan and profile of force main;
- (C) plot plan; pump station site location map;
- (D) specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project; name and classification of adjacent surface waters which could be affected by a failure.
- (5) ~~(4)~~ For septic tank subsurface ground absorption systems:
- (A) percolation data on soil; soil evaluation of the disposal site conducted by a soils scientist down to the top of the "C horizon", to include texture, porosity, color, percolation rate field capacity, total thickness, restrictive horizons, cation exchange capacity, the presence or

- absence of evidence of any seasonal high water table and his recommendations concerning application rates of liquids, solids, minerals and other constituents of the wastewater;
- (B) design data;
- (C) plans of complete system including plans plan and profile views for septic tank, all system components, system layout and cross section profile of nitrification lines;
- (D) a map of the site, with topographic contour intervals not exceeding two feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s).
- (E) For industrial waste, a hydrogeologic description of the subsurface to a depth of 20 feet or partially weathered bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
- (i) significant changes in lithology underlying the site;
 - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone, and
 - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data).
- (F) Information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within 500 feet of the waste treatment/disposal area.
- (G) Degree of treatment (primary, secondary, tertiary).
- (H) For industrial waste a complete chemical analysis of the typical wastewater or sludge to be discharged, may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus Nitrates, Phenol, Total Trihalomethanes, EP Toxicity test parameters, Total Halogenated Compounds, Total Coliforms and Total Dissolved Solids.
- (I) proposed location and construction details of a monitoring well network.
- (6) (5) For spray irrigation, or land application, or sludge except for rotary distributor disposal systems and systems for composting sludge for land application:
- (A) topographic map of disposal area; a map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, pits and quarries, springs, lakes, ponds, or other surface drainage features within 500 feet of the waste treatment/disposal site(s);
- (B) test borings and subsurface data adequate for site evaluation, excepting the application of sludge at other than dedicated sites, the information specified in Subsections (d) (5) (E), (G) and (H) of this Rule;
- (C) soil evaluation of the disposal site conducted by a recognized soils scientist and his recommendations concerning application rates of liquids, solids, minerals and other constituents of the wastewater; soil evaluation of the disposal site conducted by a soils scientist down to the top of the "C horizon", to include texture, porosity, color, percolation rate field capacity, total thickness, restrictive horizons, cation exchange capacity, the

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- presence or absence of evidence of any seasonal high water table and his recommendations concerning application rates of liquids, solids, minerals and other constituents of the wastewater;
- (D) a project evaluation conducted by a ~~recognized~~ qualified agronomist and his recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater;
- (E) complete plans and specifications for the entire system ; , including treatment, storage, application, and disposal facilities and equipment;
- (F) For industrial waste, a complete chemical analysis of the typical wastewater or sludge to be discharged, may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus, Nitrates, Phenol, Total Trihalomethanes, EP Toxicity test parameters, Total Halogenated Compounds, Total Coliforms and Total Dissolved Solids.
- (G) Excepting the application of sludge at other than dedicated sites, proposed location and construction details of a monitoring well network.
- (H) Information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within the perimeter of compliance specified in Rule 2L .0103 (h) of this Chapter.
- (7) For systems for composting sludge for land application:
- (A) a map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
- (B) complete plans and specifications for the entire system, including facilities and equipment for treatment, storage and preparation for disposal;
- (C) for industrial waste, a hydrogeologic description of the subsurface, to a depth of 20 feet or partially weathered bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
- (i) significant changes in lithology underlying the site;
 - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone; and
 - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data);
- (D) proposed location and construction details of a monitoring well network.
- (8) (4) For closed system or recycle disposal systems and treatment works:
- (A) complete description of wastewater including chemical composition and chemical reactions which may occur within the system. for industrial waste, a complete chemical analysis of the typical wastewater or sludge to be discharged, may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus, Nitrates, Phenol, Total Trihalomethanes, EP Toxicity test parameters, Total Halogenated Compounds, Total Coliforms and Total Dissolved Solids;
- (B) plans and specifications of

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the entire system. ; When necessary for an understanding of a treatment process, the applicant should also submit process flow diagrams.

- (C) soils evaluation to determine load bearings capacity, porosity, compactability and other features necessary to determine the potential for ground water contamination. For industrial waste, a hydrogeologic description of the subsurface to a depth of 20 feet or partially weathered bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:

- (i) significant changes in lithology underlying the site;
- (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone; and
- (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data).

(d) Miscellaneous Requirements.

- (1) Required sets of plans and specifications:
 - (A) regular projects -- two sets of detailed plans and specifications.
 - (B) federal and state grants projects -- three sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;
- (2) For pumping stations:
 - (A) no by pass or overflow lines.
 - (B) dual pumps.
 - (C) dual power supply where waters classified as A H, B, SB are involved.
 - (D) high water alarms;
- (3) Compliance with commission regulations on "coastal waste treatment disposal" found in

Section .0400 of this Subchapter;

- (4) Compliance with commission regulations on "septic tank systems" found in Section .0300 of this Subchapter, by a system above 3,000 gallons design capacity, which does not discharge to the surface waters of the state;
- (5) When an application for a permit is filed for wastewater facilities for a condominium, a copy of the properly executed "tri-party agreement" must be submitted.
- (6) Where applicable, evidence must be submitted to show that application has been filed with the State Utilities Commission for approval of utility rate structures;
- (7) When required, a statement should be submitted that the wastewater treatment facility involved will be properly disconnected, and the wastewater discharged into an adequate district or municipal system when it becomes available.
- (9) For rotary distributors:
 - (A) a map of the site, with a horizontal scale of one inch equal 1,000 feet or less and topographic contour intervals not exceeding two feet or 25 percent of the total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
 - (B) hydrogeological information describing the vertical and horizontal extent and lithologic character of the unconfined aquifer and its hydraulic relationship to the first confined aquifer beneath the site and the vertical permeability and thickness of the confining bed. The information must also include a determination of the transmissivity and specific

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- yield of the unconfined aquifer, determined by either a withdrawal or recharge test;
- (C) a determination of the quality and movement of groundwater and surface water in the area and an evaluation of the impact that the proposed system will have on water levels, movement and quality of waters;
- (D) complete plans and specifications for the entire system, including treatment storage and rotary distributor facilities and equipment;
- (E) the information specified in .0205 (d) (5) (H);
- (F) proposed location and construction details of monitoring well network;
- (G) proposed monitoring plan including the method of determining groundwater levels and quality of water parameters and frequency of sampling.

Statutory Authority G.S. 143-215.1; 143-215.3 (a) (1).

.0206 SUBMISSION OF PERMIT APPLICATIONS

(a) Permit applications, supporting information, and processing fee for permits issued by the division shall be filed with the Director, Division of Environmental Management, Department of Natural Resources and Community Development, Post Office Box 27687, Raleigh, North Carolina, 27611. Applications for permits from local sewer system programs shall be submitted directly to the local program director. The division shall not require permit processing fees for permits issued by local sewer system programs.

(b) Complete application and supporting information shall be filed at least 90 days in advance of the date on which construction is to begin or contracts for construction awarded.

(c) (b) Permit applications shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of

- vice-president, or his duly authorized representative;
- (2) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

Statutory Authority G.S. 143-215.1; 143-215.3 (a) (1).

.0208 STAFF REVIEW AND PERMIT PREPARATION

(a) The staff of the permitting agency shall conduct a review of plans, specifications and other project data accompanying the application and shall determine if the application and required information or accompanying supporting data or both are complete. The staff shall acknowledge receipt of a complete application. The local government unit or units having jurisdiction over specific residential projects shall be notified of permit applications in accordance with N.C.G.S. 143-215.1 (d1).

(b) If the staff's preliminary determination in Subdivision (a) of this Regulation is that the application or accompanying supporting data or both are incomplete application is not complete with all required information, the staff shall advise the applicant by mail:

- (1) that the application or accompanying supporting data or both are incomplete;
- (2) (1) how the application or accompanying supporting information data or both may be modified to make them acceptable or complete;
- (3) (2) that the 90 day processing period required in G.S. 143-215.1 and Regulation .0209 of this Section begins upon receipt of corrected or complete application or accompanying with required supporting information data or both;

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- (4) (3) that, if acceptable or complete plans with all required information are not resubmitted within 60 days, the application packet will be returned to the applicant as "incomplete".

(c) Pursuant to G.S. 143-67 (a), the staff of the division shall determine for sewer system construction or sewer system extensions, whether the treatment works or the sewer system to which the new system will connect is adequate to receive waste which will be discharged to the new system.

(d) For treatment works and disposal systems, the staff shall make a site-specific evaluation to determine the potential impacts of the proposed project on surface and ground water quality.

(d) Coordination With the Ground Water Section

(1) Upon receipt of applications and supporting data, the staff will forward copies to the appropriate field office representative of the ground water section for comment.

(2) For disposal systems or treatment works, the staff shall conduct an on site evaluation jointly with the ground water section of the division of resource planning and evaluation, Department of Natural Resources and Community Development.

(3) The staff will consider the comments of the ground water section in deciding:

- (A) whether the application and supporting information is adequate,
- (B) whether to issue or deny the permit application, or
- (C) on conditions to include in the permit.

(e) If the staff recommends issuance of the permit, the staff shall prepare the permit and letter of transmittal for the director's signature. The permit shall contain terms and conditions necessary to achieve the purposes of Article 21, Chapter 143 of the N.C. General Statutes.

(f) If the staff recommends denial of the permit application, the staff shall prepare an appropriate letter of

denial for the director's action and signature. Preparation of a letter of denial shall be deemed to be the staff's recommendation for denial. Such a letter shall state the reason or reasons for denial and measures which the applicant may take to make the application approvable.

Statutory Authority G.S. 143-215.1 (b), (d); 143-215.3 (a) (1); 143-215.3 (a) (4).

.0209 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION

(a) The director shall take final action on all applications not later than 90 days following receipt of a complete application and with required information, supporting documents. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.

(b) The director is authorized to:

(1) issue a permit containing such conditions as are necessary to effectuate the purposes of Article 21, Chapter 143, N.C. General Statutes;

(2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards and other legally applicable requirements;

(3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Regulation .0212 (a) of this Section;

(4) suspend a permit pursuant to Regulation .0212 (a) of this Section;

(5) (3) deny a permit application where necessary to effectuate:

(A) where necessary to effectuate the purposes of Article 21, Chapter 143;

(B) where necessary to effectuate the purposes of N.C.G.S. 143-215.67 (a);

(C) where necessary to effectuate commission regulations on coastal waste treatment, disposal, found in Section .0400 of this Subchapter;

(D) where necessary to

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~~effectuate~~ ~~commission~~
regulations on "subsurface
disposal ~~septic tank~~ systems,"
found in Section .0300 of this
Subchapter;

(E) regulations on groundwater
quality standards found in
Subchapter 2L of this
Chapter.

(c) If a permit is denied, the
letter of denial shall state the
reason(s) for denial and any
reasonable measures which the
applicant may take to make the
application approvable.

(d) ~~(c)~~ The director shall submit
to the commission at its regular
meetings a report which contains the
action taken with respect to any
permit application since the last
commission meeting.

(e) ~~(d)~~ Permits shall be issued or
renewed for a period of time deemed
reasonable by the director.

*Statutory Authority G.S. 143-215.1
(a), (b), (d); 143-215.3 (a) (1).*

.0210 NOTIFICATION OF APPLICANTS (REPEALED)

*Statutory Authority G.S. 143-215.1
(a); 143-215.3 (a) (4).*

.0211 PERMIT RENEWALS

Requests for permit renewals are to
be submitted to the director six
months prior to expiration unless
revoked in accordance with
Regulation .0213 Regulation
.0209(b)(3) of this Section. Such
requests must be submitted with a
processing fee of twenty five one
hundred dollars (\$100.00) (\$25.00) in
the form of a check or money order
made payable to the N. C.
Department of Natural Resources
and Community Development. All
applications are incomplete until
required processing fees are received,
and may be returned to the
applicant. The processing fee shall
not apply to any farmer who
submits an application which
pertains to his farming operation.

*Statutory Authority G.S. 143-215.3
(e) (1).*

.0212 ADMINISTRATIVE HEARINGS An applicant whose permit is

denied, or is granted subject to
conditions ~~he~~ the applicant deems
unacceptable, shall have the right to
an adjudicatory hearing upon giving
written notice, identifying the
specific issue to be contended, to the
director within 30 days following
notice of final decision to deny or
grant the permit. Unless such notice
is given, the decision on the
application shall be final and
binding. Administrative hearings
shall be conducted in accordance
with the procedure set forth in
Subchapter 2I, Hearings, of this
Title.

*Statutory Authority G.S. 143-215.1
(e); 143-215.3 (a) (1); 143-215.4.*

.0213 MODIFICATION AND REVOCATION OF PERMITS

Any permit issued by the division
pursuant to these Regulations is
subject to revocation, ~~suspension~~, or
modification upon 60 days notice
modification by the director in
whole or part for good cause
including but not limited to:

- (1) violation of any terms or
conditions of the permit;
- (2) obtaining a permit by
misrepresentation or failure to
disclose fully all relevant facts;
- (3) refusal of the permittee to
permit authorized employees of
the Department of Natural
Resources and Community
Development upon presentation
of credentials:
 - (a) to enter upon permittee's
premises on which a system is
located in which any records are
required to be kept under terms
and conditions of the permit,
 - (b) to have access to any copy
and records required to be kept
under terms and conditions of
the permit,
 - (c) to inspect any monitoring
equipment or method required
in the permit, or
 - (d) to sample any discharge of
pollutants.

*Statutory Authority G.S. 143-215.1
(b) (2); 143-215.3 (a) (1).*

.0214 INVESTIGATIONS: MONITORING AND REPORTING (REPEALED)

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Statutory Authority G.S. 143-215.1 (b); 143-215.3 (a).

.0215 DELEGATION OF AUTHORITY

For permits issued by the division, the director is authorized to delegate any or all of the function contained in these Regulations except the following:

- (1) denial of a permit application,
- (2) ~~suspension of a permit,~~
- (3) (2) revocation of a permit,
- (4) (3) modification of a permit.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.3 (a) (4).

.0216 LIMITATION ON DELEGATION (REPEALED)

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.3 (a) (4); 143-215.9 (d).

.0218 LOCAL PROGRAMS FOR SEWER SYSTEMS

(b) Applications.

- (3) An attorney representing the local unit of government submitting the application must certify that the local authorities for processing permit applications, setting permit requirements, enforcement, and penalties are at least as stringent as compatible with those for permits issued by the division.

Statutory Authority G.S. 143-215.1; 143-215.3 (a) (1).

.0219 MINIMUM DESIGN REQUIREMENTS

(a) All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and shall not result in nuisance conditions. The plans and specifications must be stamped and sealed by a Professional Engineer.

(b) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling methods acceptable to the director.

(c) Impoundments, trenches or other excavations made for the purpose of storing or treating waste will not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of assigned standards, as demonstrated by predictive calculations or modeling methods acceptable to the director.

(d) The bottoms of earthen impoundments, trenches or other similar excavations with the exception of nitrification fields and sewer line excavations shall be at least four feet above the consolidated rock surface, except that the bottom of excavations which are less than four feet above consolidated rock shall have a liner with a hydraulic conductivity no greater than 1×10^{-7} centimeters per second. Liner thickness will be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Separation distances or liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the director, that construction and use of these treatment and disposal units will not result in contravention of assigned standards.

(e) Industrial waste shall not be applied or discharged onto or below the land surface when the vertical separation between the waste and the water table is less than three feet unless such placement or discharge will not result in a contravention of classified groundwater standards as demonstrated by predictive calculations or modeling methods acceptable to the director.

(f) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding nitrification fields and holding ponds containing treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than 1×10^{-6} centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no

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greater than that of the natural material liner.

(g) Except as otherwise provided by these requirements or by terms of a permit, all waste treatment, storage and disposal facilities must maintain and operate a groundwater monitoring system as approved by the division. The monitoring system must be designed to assess the impact of any discharge on the quality of the underlying groundwaters and must be based on the results of the hydrogeologic investigation.

(h) For pumping stations:

(1) no by-pass or overflow lines,

(2) multiple pumps shall be provided capable of pumping at a rate of 2.5 times the average daily flow rate with any one pump out of service. Pump-on/Pump-off elevations shall be located such that 2-8 pumping cycles per hour may be achieved in the pump station. If extended detention times are necessary due to phased development, the need for odor and corrosion control must be evaluated by the applicant.

(3) where waters classified as WS, SA, B or SB could be impacted by a power failure, at least one of the following shall be required:

(A) dual source or standby power supply on site or;

(B) telemetry systems with sufficient numbers of standby generators and staff for distribution or;

(C) approval by the director that the pump station:

(i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and

(ii) has sufficient storage capacity that no potential for overflow exists, and

(iii) is connected to facilities that can tolerate septic wastewater due to prolonged detention;

(4) A screened vent shall be provided for the wet well;

(5) high water alarms;

(6) protection from a 100 year flood;

(7) restricted access to the site and equipment.

(i) For sewer systems and sewer system extensions:

(1) All building drains and building sewers which are approved by the local building inspector in accordance with the North Carolina Building Code are deemed to be permitted by the Environmental Management Commission;

(2) All sewers shall be designed based upon at least minimum standards which include:

(A) wastewater flow rate at peak loading shall be adequate to serve the facilities for which they are intended with the sewer flowing half full;

(B) a velocity of two feet per second;

(C) construction and operation shall not result in water pollution;

(D) infiltration/exfiltration rate limited to 200 gallons per day per inch of pipe diameter per mile of pipe;

(E) construction and operation consistent with all applicable local ordinances;

(F) for public sewers, a minimum eight inch diameter pipe;

(G) minimum separations:

(i) Storm sewers
(vertical) 12 inches

(ii) Water mains
(vertical) 18 inches or
(horizontal) 10 feet

(iii) In benched trenches
(vertical) 18 inches

(iv) Any private or public water supply source, including any Class I or Class II impounded reservoirs used as a source of drinking water 100 feet

(v) Waters classified ~~A-II~~, WSI, WSII, WSIII, B, SA, or SB [from normal high water (or tide elevation)] 50 feet

(vi) Any other stream,

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- lake or impoundment 10 feet
- (vii) Any building foundation 5 feet
- (viii) Any basement 10 feet
- ~~(ix) Any property line 5 feet~~
- ~~(ix) (x)~~ Top slope of embankment or cuts of 2 feet or more vertical height 10 feet
- ~~(x) (xi)~~ Drainage systems
- (I) Interceptor drains 5 feet
- (II) Ground water lowering and surface drainage ditches 10 feet
- ~~(xi) (xii)~~ Any swimming pool 10 feet
- Ferrous sewer pipe with joints equivalent to water main standards, shall be used where these minimum separations cannot be maintained. ~~In no case shall the~~ The minimum separation shall however not be less than 25 feet ; from a private well or 50 ft from a public water supply well.
- (H) Three feet minimum cover shall be provided for all sewers unless ferrous material pipe is specified. Ferrous material pipe or other pipe with proper bedding to develop design supporting strength shall be provided where sewers are subject to traffic bearing loads;
- (I) The maximum separation between manholes shall be 425 feet unless written documentation is submitted with the application that the owner/authority has the capability to perform routine cleaning and maintenance on the sewer at the specified manhole separation;
- (J) Drop manholes shall be provided where invert separations exceed 2.5 feet;
- (K) Manholes shall be designed for 100-year flood protection;
- (L) Air relief valves shall be located at all high points along force mains;
- (M) Odor and corrosion control must be evaluated by the applicant for all sewers and force mains with extended travel times.
- (j) For treatment works and disposal systems:
- (1) no by-pass or overflow lines;
 - (2) multiple pumps if pumps are used;
 - (3) where waters classified as WS-I, WS-II, WS-III, B, SA, or SB could be impacted by a power failure, at least one of the following:
 - (A) dual or standby power supply on site, capable of powering all essential treatment components under design conditions, or
 - (B) approval by the director that the facility:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage capacity that no potential for overflow exists, and
 - (iii) can tolerate septic wastewater due to prolonged detention;
 - (4) protection from 100 year flood;
 - (5) buffer zones of at least the following distances, and greater where necessary to comply with Section 2H .0400 of this Subchapter or to address particular site or waste characteristics:
 - (A) Any habitable residence or place of public assembly under separate ownership or which are to be sold:
 - (i) for spray irrigation systems not covered by 2H .0206(e)....400 feet
 - (ii) for surface sludge application....400 feet
 - (iii) for subsurface sludge injection....200 feet
 - (iv) for facultative lagoons....400 feet
 - (v) for activated sludge plants or surface sand filters....100 feet
 - (B) Any private or public water supply source....100 feet;
 - (C) Streams classified as WS-I,

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- WS-II, WS-III or B:
 - (i) for subsurface disposal....50 feet
 - (ii) for non-discharge surface disposal....100 feet
- (D) Waters classified SA or SB....100 feet from normal high water:
- (E) Any other stream, canal, marsh, or coastal waters:
 - (i) for subsurface disposal....50 feet
 - (ii) for non-discharge surface disposal....100 feet
- (F) Any Class I or Class II impounded reservoir used as a source of drinking water....100 feet from normal high water:
- (G) Any other lake or impoundment:
 - (i) for subsurface disposal....50 feet
 - (ii) for surface disposal....100 feet
- (H) Any building foundation:
 - (i) for subsurface disposal....10 feet
 - (ii) for surface disposal....100 feet
- (I) Any basement:
 - (i) for subsurface disposal....15 feet
 - (ii) for surface disposal....100 feet
- (J) Any property line:
 - (i) for spray irrigation....150 feet
 - (ii) for other surface disposal systems....100 feet
 - (iii) for subsurface sludge injection....100 feet
 - (iv) for other surface treatment systems....50 feet
 - (v) for other subsurface systems....10 feet
- (K) Top of slope of embankments or cuts or two feet or more in vertical height:
 - (i) for subsurface disposal....15 feet
 - (ii) for surface disposal....100 feet
- (L) Any water line....10 feet:
- (M) Drainage systems:
 - (i) Interceptor drains (upslope)
 - (I) for subsurface disposal....10 feet
 - (II) for surface disposal....100 feet
 - (ii) Interceptor drains (downslope)
 - (I) for subsurface disposal....25 feet
 - (II) for surface disposal....100 feet
- (N) Any swimming pool:
 - (i) for subsurface disposal....15 feet
 - (ii) for surface disposal....100 feet
- (O) Any other nitrification field (except repair area)....20 feet
- (P) Any well....100 feet
- (Q) Public right-of-way surface disposal....50 feet
- (6) adequate flow equalization for facilities with fluctuations in influent flow which may adversely affect the performance of the system;
- (7) preparation of an operational management plan, including restricted access to the site and equipment, and, if appropriate, a crop management plan;
- (8) except for facilities for single family residences or as approved by the director, appropriate monitoring wells designed to assess the impacts on the groundwater of any discharge and constructed in accordance with Section 2C .0100 of this Chapter.
- (k) For Land Application of Domestic Wastewater on Golf Courses and Other Public Access Areas:
 - (1) Aerated flow equalization facilities with a capacity of at least 25 percent of the system design flow.
 - (2) All essential treatment and disposal units shall be provided in duplicate.
 - (3) The treatment process shall produce an effluent with a monthly average TSS of less than 5 mg/l and a daily maximum TSS of less than 10 mg/l and a maximum fecal

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coliform level of less than 1/100 ml, prior to discharge to a five-day detention pond.

- (4) There must be no public access to the five-day detention pond.
- (5) The size of the irrigation pond, that follows the five day holding pond, shall be justified using a mass water balance for worse case conditions.
- (6) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the five-day detention pond shall be provided.
- (7) Requirements for the lining of the five-day detention and irrigation ponds shall be site-specific.
- (8) In the design of the sprinkler system, the piping shall be a separate system, with no cross-connections to a potable water supply (includes no spigots on the distribution system).
- (9) The rate of application shall be site-specific but not exceeding 1 and 3/4 inches/week (as given in 2H .0404(g)(8).
- (10) The time of spraying shall occur between 11:00 p.m. and three hours prior to the daily opening of the course.
- (11) There shall be a 100 foot vegetative buffer zone between the edge of spray influence and the nearest dwelling.
- (12) Signs shall be posted at the pro-shop stating that the course is irrigated with treated wastewater.
- (13) There shall be a certified operator of a class equivalent to the class plant on call 24 hours/day.
- (l) Wastewater Flow Rates:
 - (1) In determining the volume of sewage from dwelling units, the flow rate shall be 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms will increase the volume by 120 gallons per day. Each bedroom or any other

room or addition that can reasonably be expected to function as a bedroom shall be considered a bedroom for design purposes. When the occupancy of a dwelling unit exceeds two persons per bedroom, the volume of sewage shall be determined by the maximum occupancy at a rate of 60 gallons per person per day.

- (2) The following table shall be used to determine the minimum allowable design daily flow of wastewater facilities. Design flow rates for establishments not identified below shall be determined using available flow data, water-using fixtures, occupancy or operation patterns, and other measured data.

Type of Establishments	Daily Flow For Design
Airports, also RR Stations, bus terminals. (not including food service facilities)....	5 gal/passenger;
Barber Shops....	50 gal/chair;
Bars, Cocktail Lounges (not including food services)....	20 gal/seat;
Beauty Shops....	125 gal/booth or bowl;
Bowling Alleys....	50 gal/lane;
Businesses (other than those listed in this table)....	25 gal/employee;
Camps:	
Construction or work camps....	60 gal/person
Summer camps....	60 gal/person
Camp grounds	
Without water and sewer hookups....	100 gal/campsite
Travel trailer/recreational vehicle park with water and sewer hookup....	120 gal/campsite;
Churches (not including food service, day care and camps)....	3 gal/seat;
Country Clubs - Resident Members....	60 gal/person
Nonresident Members....	20 gal/person;
Day Care Facilities....	15 gal/person;
Factories (exclusive of industrial wastes) -- per shift....	25 gal/person

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Add for showers -- per shift....10 gal/person;

Food Service Facilities Restaurants (including fast food)....40 gal/seat or 40 gal/15 ft² of dining area, whichever is greater

24-hour Restaurants....50 gal/seat

Single-Service (exclusive of fast food)....25 gal/seat

Food Stands:

(1) Per 100 square feet of total floor space....50 gal

(2) Add per employee....25 gal;

Hospitals....300 gal/bed;

Laundries (self-service)....500 gal/machine;

Marinas....10 gal/boat slip

With bathhouse....30 gal/boat slip;

Meat Markets:

(1) Per 100 square feet of total floor space....50 gal

(2) Add per employee....25 gal;

Motels/Hotel....120 gal/room with cooking facilities in room....175 gal/room;

Nursing/Rest Homes -- With laundry....120 gal/bed

Without laundry....60 gal/bed;

Offices -- per shift....25 gal/person;

Residential Care Facilities....60 gal/person;

Resort....200 gal/room;

Restaurants....40 gal/seat, or 40 gal/15 ft² of dining area (whichever is greater);

Schools:

Day Schools:

With cafeteria, gym, and showers....15 gal/student;

With cafeteria only....12 gal/student;

With neither cafeteria nor showers....10 gal/student;

Boarding....60 gal/person;

Service Stations....250 gal/water closet or urinal;

Stadiums, Auditoriums, Theaters, Drive-ins....5 gal/seat or space;

Stores, shopping centers and malls -- Note: if food service is included, add 40 gal/seat....120 gal/1000 ft²;

Swimming Pools and Bathhouses....10 gal/person.

(3) An adjusted daily sewage flow may be granted upon a showing that a sewage system is adequate to meet actual daily water consumption from a facility included in

Subparagraph (1) or (2) of this Paragraph.

Documented, representative data from that facility or a comparable facility shall be submitted, consisting of at least 12 consecutive monthly total water consumption readings and daily total water consumption readings for at least 30 consecutive days of water use. The daily readings shall be taken during a projected peak sewage flow month. The adjusted design daily sewage flow shall be determined by taking the numerical average of the daily readings that fall within the upper 10 percent of the daily readings when ranked in descending order.

(m) Additional requirements:

(1) distance between water supply wells and waste facilities in accordance with Rule 2C .0107(a) of this Chapter or, if a greater area may be impacted, a distance in accordance with the perimeter of compliance described in Rule 2L .0103(h) of this Chapter;

(2) compliance with the groundwater standards specified in Subchapter 2L of this Chapter;

(3) where applicable compliance with regulations on "coastal waste treatment disposal" found in Section .0400 of this Subchapter; and

(4) For subsurface disposal systems, compliance with regulations on subsurface disposal systems found in Section .0300 of this Subchapter.

(n) Alternative Design Criteria may be approved by the director. This approval will only be given in cases where the applicant can demonstrate that the Alternative Design Criteria will provide the following:

(1) Equal or better treatment of the waste; and

(2) Equal or better protection of the waters of the state; and

(3) No increased potential for nuisance conditions.

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Statutory Authority G.S. 143-215.1; 143-215.3(a)(1).

.0220 CERTIFICATION OF COMPLETION

Prior to the operation of any sewer system, treatment works or disposal system permitted in accordance with this Section, a certification must be received by the permitting agency from a professional engineer certifying that the sewer system, treatment works or disposal system has been installed in accordance with the approved plans and specifications.

Statutory Authority G.S. 143-215.1.

.0221 OPERATIONAL AGREEMENTS

Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of Environmental Management. The requirement for assurance of financial solvency will be made on a case by case determination.

Statutory Authority G.S. 143-215.1(d1).

SECTION .0900 - LEGAL PRETREATMENT PROGRAMS

.0901 PURPOSE

(a) This Section is designed to provide procedures for submission, review, and approval of local pretreatment programs as well as procedures for the implementation of approved pretreatment programs. This Section also contains the requirements for removal allowances and variances from categorical pretreatment standards for fundamentally different factors.

Statutory Authority G.S. 143-215.3(a)(14).

.0902 SCOPE

The section applies to nondomestic pollutants covered by 15 NCAC 2B .0405(a) discharged into or otherwise transported by

truck or rail or otherwise introduced into POTWs ; to POTWs which receive wastewater from sources subject to pretreatment standards established in 15 NCAC 2B .0405(a) ; and to any new or existing source subject to pretreatment standards ; and to POTWs which receive wastewater from sources subject to pretreatment standards established in compliance with 15 NCAC 2H .0909.

Statutory Authority G.S. 143-215.3(a)(14).

.0903 DEFINITION OF TERMS

(a) The definitions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.3 are hereby adopted by reference as amended through May 4, 1984 March 1, 1987.

(b) For this Regulation the following definitions in addition to those in .0903(a) above shall apply:

(1) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum.

(2) "Commission" means the Environmental Management Commission of the Department of Natural Resources and Community Development or its successor.

(3) "Committee" means the NPDES committee of the Environmental Management Commission.

(4) "Control Authority" refers to:

(A) the POTW if the POTW's submission for its pretreatment program has been approved, or;

(B) the approval authority if the submission has not been approved.

(5) "Division" refers to the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management.

(6) "EPA" means the United States Environmental Protection Agency.

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- (7) "IDMR Form" or "IDMR" means the indirect discharger monitoring reporting form.
- (8) "POTW Director" means the chief administrative officer of the publicly owned treatment works or his delegate.
- (9) "Significant Industrial User" means a facility which discharges wastewater into a publicly owned treatment works and which:
- (A) has an average daily process wastewater flow of greater than 50,000 gallons per day, or;
 - (B) contributes more than 5 percent of any design capacity of the wastewater treatment plant which receives the discharge, or;
 - (C) is required to meet a national categorical pretreatment standard, or;
 - (D) is determined by the control authority to have a potential to adversely impact the wastewater treatment plant or receiving stream, or to limit the POTW sludge disposal options, or;
 - (E) has been included in the monitoring program submitted in accordance with .0906 of this Section provided such IU has not been eliminated through .0907(b) and (c) of this Section.
- (10) "Significant Violation" is:
- (A) a six month average value for a conventional or nonconventional pollutant which exceeds a pretreatment standard by 40 percent, or;
 - (B) a six month average value for a toxic pollutant which exceeds a pretreatment standard by 20 percent, or;
 - (C) any violation which remains uncorrected for 45 days after notification of noncompliance by the control authority, or;
 - (D) any violation which contributes to or results in noncompliance with the POTW's NPDES permit.
- (11) "Staff" means the staff of the Division of Environmental Management, Department of

Natural Resources and Community Development.

Statutory Authority G.S. 143-215.3(a)(1)(14).

.0904 REQUIRED PRETREATMENT PROGRAMS

The regulations covering pretreatment program development by the POTW promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(a) through 40 CFR Part 403.8(c) are hereby adopted by reference as amended through ~~May 1, 1984.~~ March 1, 1987.

Statutory Authority G.S. 143-215.1(a)(b); 143-215.3(a)(14).

.0905 POTW PRETREATMENT PROGRAM REQUIREMENTS

The POTW pretreatment program requirements promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(f) are hereby adopted by reference as amended through ~~May 1, 1984.~~ March 1, 1987.

Statutory Authority G.S. 143-215.1(a)(b); 143-215.3(a)(1)(14); 153A-274; 153A-275; 160A-311; 160A-312.

.0906 SUBMISSION FOR APPROVAL

(a) The regulations covering the contents of pretreatment programs submitted for approval and the contents of a request to revise pretreatment standards, promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.9 are hereby adopted by reference as amended through ~~May 1, 1984.~~ March 1, 1987.

(b) In addition to the contents of a POTW pretreatment program submission from .0906(a) above, the program submission must contain:

- (1) an industrial user survey as required by 40 CFR 403.8 (f) (2) (i-iii) and 15 NCAC 2H .0905, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users;
- (2) technical information

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- (including specific data required to specify violations of the discharge prohibitions in 40 CFR 403.5(a) and (b) and 15 NCAC 2H .0909) necessary to develop an industrial waste ordinance or other means of enforcing pretreatment standards;
- (3) specific POTW effluent limitations for prohibited pollutants (as defined in 40 CFR 403.5(a) and (b) and 15 NCAC 2H .0909) contributed to the POTW by industrial users and the technical basis for these limitations.
- (4) the design of a monitoring program which will implement the requirements of 40 CFR 403.8(f) and 403.12, and 15 NCAC 2H .0905 and .0908;
- (5) a list of monitoring equipment required by the POTW to implement the pretreatment program and a description of municipal facilities to be constructed for monitoring and analysis of industrial waste;
- (6) procedures for approving the construction of pretreatment facilities by industrial users and for permitting industrial users for construction, operation and discharge as required by NCGS 143-215.1; procedures for approving construction shall include:
- (A) having a professional engineer, licensed to practice in this state, on the POTW staff (or retained as a consultant) to review unusual situations or designs and/or;
- (B) having such situations referred to the division for review and approval;
- (7) an enforcement management strategy for identifying violations of and enforcing specific local limits as required by and specified in 40 CFR 403.5 and 403.6 and 15 NCAC 2H .0909 and .0910; and
- (8) a request for pretreatment program approval as required by 40 CFR 403.9 and 15 NCAC 2H .0900.
- (c) The POTW must submit three bound copies of the program containing the information in .0906(a) and (b) above to the Division of Environmental Management.
- Statutory Authority G.S. 143-215.1 (a) (b); 143-215.3 (a) (1) (14).
- .0907 PROGRAM APPROVAL PROCEDURES: REVISION AND WITHDRAWAL
- (a) The approval procedures for POTW pretreatment programs promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.11 are hereby adopted by reference as amended through May 1, 1984.
- (b) Upon approval, the POTW is delegated the authority to issue permits required by G.S. 143-215.1(a) for those pretreatment facilities discharging or proposing to discharge to the POTW.
- (a) Procedures for approval of a POTW pretreatment program are as follows:
- (1) The approval procedures for POTW pretreatment programs promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.11 are hereby adopted by reference as amended through March 1, 1987.
- (2) Upon approval, a POTW is delegated, subject to the provisions of .0916 and .0917, the authority to issue the construction, operation and discharge permits required by G.S. 143-215.1(a) for those Significant Industrial Users discharging or proposing to discharge to the POTW.
- (b) Either the division or the POTW may initiate program revisions. The POTW shall keep the division fully informed of any proposed modifications to its approved pretreatment program, its legal authority, its forms, procedures and priorities. Revisions to an approved pretreatment program shall be accomplished as follows:
- (1) the POTW shall submit a modified program description, an attorney's statement if the legal authority of the program is being modified, and other

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- documents as the director determines to be necessary under the circumstances;
- (2) whenever the director determines that the proposed program modifications are substantial, the division shall issue public notice and provide an opportunity for public comment as described in 15 NCAC 2H .0109 and .0110;
- (3) the director or his delegate shall approve or disapprove program revisions based on the requirements of this Section; NCGS 143-215.1, NCGS 143-215.3 and the Water Quality Memorandum or Agreement between the division and the EPA;
- (4) a pretreatment program revision shall become effective upon written approval of the director.
- (c) Revision to the POTW's Significant Industrial Users list shall be made using the procedure outlined in .0907(b) above and shall include documentation which shows:
- (1) the industrial user does not fit the criteria outlined in .0903(b)(9)(A) through (D) and;
- (2) the industrial user no longer discharges nondomestic wastewater to the POTW, or;
- (3) the industrial user discharges wastewater with pollutant levels which are consistently less than or equal to the levels associates with domestic sewage, or;
- (4) the industrial user discharges wastewater which is consistently below pretreatment standards and the wastewater treatment plant receiving the discharge has a reserve capacity for all pollutants reasonably expected to be in the industrial user's discharge.
- (d) The director may withdraw pretreatment program approval when a POTW no longer complies with the requirements of this Section and the POTW fails to take corrective action. The following procedures apply when the director determines that program withdrawal may be needed:
- (1) the director shall give the POTW 180 days notice of the program withdrawal;
- (2) the POTW shall submit within 60 days of such notice a plan for the orderly transfer of all relevant program information not in the possession of the division (such as permit files, compliance files, reports and permit applications) which is necessary for the division to administer the pretreatment program;
- (3) within 60 days of the receipt of the POTW transfer plan the director shall evaluate the POTW plan and shall identify any additional information needed by the division for program administration and/or identify any other deficiencies in the plan;
- (4) at least 30 days before the program withdrawal the director shall publish public notice of the program transfer and shall mail notice to all pretreatment permit holders of the POTW.

Statutory Authority G.S. 143-215 (a); 143-215.1 (a) (c); 143-215.3 (a) (3) (14) (e).

.0908 REPORTING REQUIREMENTS FOR POTWS AND INDUSTRIAL USERS

(a) The regulations covering the reporting requirements for POTWs and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.12 are hereby adopted by reference as amended through May 1, 1984, March 1, 1987.

(b) POTWs with approved pretreatment programs shall submit twice per year a pretreatment report describing its pretreatment activities over the previous six months. Two copies of each pretreatment report shall be submitted according to the following schedule; a report shall be submitted to the division by August 1 of each year describing pretreatment activities for January 1 through June 30 of that year, and a like report shall be submitted by February 1 of each year for activities conducted from July 1 through

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December 31 of the previous year. These reports shall contain the following information:

- (1) a narrative summary of actions taken by the permittee to ensure compliance with pretreatment requirements;
- (2) a list of any substantive changes to be made in the approved program;
- (3) a compliance status summary of all Significant Industrial Users;
- (4) a list of those Significant Industrial Users in significant violation of pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations;
- (5) sampling and analytical results recorded on forms approved by the director.

(c) Samples shall be collected and analyzed by the POTW staff independent of the industry for each Significant Industrial User a minimum of twice each year, once during each six month reporting period in (b) above.

(d) For the purpose of indicating the nature and concentration of the industries discharges in the baseline reports, deadline compliance reports and periodic compliance reports required by .0908 above the following shall apply:

- (1) analyses shall be completed on all pollutants which are limited by the categorical standard unless the categorical standard contains specific certification procedures for specific pollutants;
- (2) compliance with a monthly average limitation shall be shown every six months by the analysis of a sufficient amount of samples to be representative of the industry's monthly discharge; this shall include a minimum of four samples.

(c) POTWs and Industrial Users shall retain for a minimum of three years records of monitoring activities and results along with support information including general records, water quality records, and records of industrial impact on the POTW. Support information for

pretreatment permits shall be retained for five years.

*Statutory Authority G.S.
143-215.1(a)(b); 143-215.2;
143-215.3(a)(2)(14);
143-215.6(a)(1); 143-215.63.*

.0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES

The regulations covering national prohibitive pretreatment standards promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.5 are hereby adopted by reference as amended through ~~May 1, 1984~~, March 1, 1987.

*Statutory Authority G.S.
143-215.1(a)(7); 143-215.1(b);
143-215.3(a)(1), (14).*

.0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS

The regulations covering national categorical pretreatment standards promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.6 are hereby adopted by reference as amended through ~~May 1, 1984~~, March 1, 1987.

*Statutory Authority G.S.
143-215.1(a)(7); 143-215.1(b);
143-215.3(a)(14).*

.0911 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT (REPEALED)

Statutory Authority G.S. 143-215.1 (a), (b); 143-215.3 (a) (14).

.0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS

The regulations covering variances from categorical pretreatment standards for fundamentally different factors promulgated by the Environmental Protection Agency and codified as 40 CFR 403.13 are hereby adopted by reference as amended through ~~May 1, 1984~~, March 1, 1987.

Statutory Authority G.S. 143-215 (a); 143-215.1 (a), (b); 143-215.3 (a), (14), (e).

.0913 PUBLIC ACCESS TO

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INFORMATION

Information and data provided by an industrial user to the director pursuant to this Section, identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be so submitted or which may be furnished by an industrial user to the POTW director in connection with required periodic reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW director or his authorized representative that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets. ~~Any request for confidential treatment of information and for access to such information shall be governed by procedures specified in 40 CFR Part 2.~~

Statutory Authority G.S. 143-215.1 (a), (b), (c); 143-215.3 (a) (3); 132.

.0914 UPSET PROVISION

The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.16 is hereby adopted by reference as amended through ~~May 1, 1984.~~ March 1, 1987.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.3 (a) (14).

.0915 NET/GROSS CALCULATION

The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.15 are hereby adopted by reference as amended through ~~May 1, 1984.~~ March 1, 1987.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14).

.0916 PERMITS

(a) All Significant Industrial Users who discharge waste into a POTW or who construct or operate

a pretreatment facility must obtain a permit from the Control Authority.

(b) Where the division is the Control Authority permits shall be issued in accordance with .0100 of this Section.

(c) Where the POTW is the Control Authority, permits shall be issued as follows:

(1) Application: any Significant

Industrial User required to obtain a permit in .0916(a) above shall be required to complete, sign and submit to the Control Authority a permit application. Application fees and procedures may be prescribed by the Control Authority. All pretreatment permit applications shall include as a minimum:

- (A) name of industry;
- (B) address of facility;
- (C) standard industrial classification (SIC) code(s) or expected classification and industry category;
- (D) wastewater flow;
- (E) types and concentrations (or mass) of pollutants contained in the discharge;
- (F) major products manufactured or services supplied;
- (G) description of existing on-site pretreatment facilities and practices;
- (H) locations of discharge points;
- (I) raw materials used or stored at the site;
- (J) flow diagram or sewer map for the industry;
- (K) number of employees;
- (L) operation and production schedules.

(2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an appropriate application form as listed in .0916 (c) (1) prior to permit expiration. The number of days prior to expiration by which the application must be filed shall be established by the Control Authority.

(3) Review and Evaluation:

- (A) The POTW Director is authorized to accept applications for the

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commission and shall refer all applications to the POTW staff for review and evaluation.

(B) The POTW Director shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(C) The POTW staff shall include as part of the permit record documentation of an on site inspection of the industrial facility and any existing wastewater pretreatment system. Such inspection shall have been conducted a maximum of 12 months prior to the issue date of the pretreatment permit.

(D) The POTW staff shall conduct an evaluation and make a tentative determination to issue or deny the permit. If the POTW staff's tentative determination is to issue the permit, it shall make the following additional determinations in writing:

- (i) proposed effluent limitations for those pollutants proposed to be limited;
- (ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
- (iii) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

The POTW staff shall organize the determinations made into a pretreatment permit.

(4) Permit synopsis: A brief synopsis of the application and permit shall be prepared by the POTW staff for all Significant Industrial User permits. This synopsis shall be sent to the division along with the

pretreatment permit. The contents of the synopsis shall include at least the following information:

(A) a quantitative description of the discharge described in the application which includes at least the following:

- (i) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
- (ii) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition.

(B) the basis for the pretreatment limitations including the documentation of any calculations used in applying categorical pretreatment standards.

(5) Hearings:

(A) Adjudicatory Hearings.

An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, shall have the right to an adjudicatory hearing before the POTW Director or a hearing officer appointed by the POTW Director upon making written demand, identifying the specific issues to be contended, to the POTW Director within 30 days following notice of final decision to deny or grant the permit. Unless such demand is made, the decision on the application shall be final and binding.

(B) Appeal Hearings. Any decision of a hearing officer made as a result of an adjudicatory hearing held under .0916(c)(5)(A) above may be appealed by any party, to the governing body of the Control Authority upon filing a written demand within 10 days of receipt of notice of the decision.

(C) Hearings held under this

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- subdivision shall be conducted using procedure prescribed by the Control Authority.
- (6) Final Action on Permit Applications:
- (A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by .0916(c)(5)(A) and .0917(b) of this Regulation, no objection has been made the permit shall become final and binding.
- (B) The POTW Director is authorized to:
- issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;
 - issue a permit containing time schedules for achieving compliance with applicable pretreatment standards and limitations and other legally applicable requirements;
 - modify or revoke any permit pursuant to .0916(c)(7);
 - deny a permit application.
- (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW Director but in no case shall the period exceed five years.
- (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of his permit application. Notifications of denial shall specify the reasons therefore and the proposed changes which in the opinion of the POTW Director will be required to obtain the permit.
- (7) Modification and Revocation of Permits:
- (A) Any permit issued pursuant to this Regulation is subject to revocation or modification in whole or part for good cause as outlined in the Control Authority's sewer use regulations.
- (B) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows:
- changes in the ownership of the discharge when no other change in the permit is indicated;
 - a single modification of any compliance schedule not in excess of four months;
 - modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- Statutory Authority G.S. 143-215(a); 143-215.1 (a) (c); 143-215.3 (a) (3), (14) (e).*
- .0917 PRETREATMENT PERMIT REVIEW**
- (a) Each POTW shall transmit to the division:
- Notice of actions taken by the POTW to the consideration of any permit application including a copy of each pretreatment permit and any conditions, requirements or documents which are related to the pretreatment permit;
 - A synopsis of the permit.
- (b) The division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon, objections to or recommendations with respect to the permit. Unless such an objection is made the permit shall be final and binding.
- (c) Within 30 days of the receipt of a pretreatment permit to which the director has objected the staff shall set forth in writing and transmit to the control authority:
- A statement of the

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- reasons for the objection, including the regulations that support the objection and;
- (2) The actions which must be taken by the control authority to eliminate the objection including the effluent limitations and conditions which the permit would include if it were issued by DEM.
- (d) The director's objection to the issuance of a pretreatment permit must be based upon one or more of the following grounds:
- (1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;
- (2) the procedures followed in connection with formulation of the pretreatment permit failed to comply with the procedures required by State Statute or by the POTW's approved pretreatment program;
- (3) a finding made by the control authority in connection with the pretreatment permit which misinterprets any categorical pretreatment standard or pretreatment regulation or misapplies them to the facts;
- (4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or sampling by the permittee are, in the judgement of the director, inadequate to assure compliance with permit conditions or applicable pretreatment standards.
- (e) Prior to notifying the POTW of and objection the director:
- (1) shall consider all data transmitted pursuant to .0916;
- (2) may, if more information is needed to determine whether the preliminary permit is adequate, request the POTW to make available to the staff the complete record of permit proceedings, or any portions of the record that the director determines are necessary for review. If this request is made within 30 days of the state's receipt of the preliminary permit under .0916 it shall constitute an interim objection to the issuance of the permit and the full 30 day review period in .0917(b) above shall recommence when the staff has obtained such record or portions of the record; and
- (3) may, in his discretion and to the extent feasible within the period of time available, afford interested persons the opportunity to comment on the basis for the objection.
- (f) If within 60 days of the receipt of the director's objection the POTW does not resubmit a permit revised to meet the director's objection, the director may issue the permit in accordance with 15 NCAC 2H .0100. Exclusive authority to issue the permit required by NCGS 143-215.1(a) passes to the division when this time expires.
- Statutory Authority G.S. 143-215(a); 143-215.1 (a) (c); 143-215.3 (a) (3). (14) (e).*
- Notice is hereby given in accordance with G.S. 150B-12 that the Marine Fisheries Commission intends to adopt and amend regulations cited as 15 NCAC 3B .0102 (b); .0105 (b) (c) (g); .0304 (4) (5); .0305 (5); .0306 (b); .0308 (2); .0404 (5); .0501; and .0503; .0504; .0701 (a) (c) (e); .0801 (b); .0901 (a) (c); .0905; and .1002 (a); .1101; .1109 (b) (c); .1111; .1404; .1405; .1408; .1502 (a); and .1601; .1602; .1603; .1604; .1605.*
- The proposed effective date of this action is August 1, 1987.*
- The public hearing will be conducted at 7:30 p.m. on May 18, 19, 20, 21, 26, 27, 28; June 1, 1987. May 18 - Hatteras, Civic Center; May 19 - Manteo, Marine Resource Center; May 20 - Washington, District Courthouse; May 21 - Morehead, Carteret Technical College; May 26 - Wilmington, New Hanover County Courthouse; May 27 - Raleigh McKimmon Center; May 28 - Winston-Salem, Agriculture Ext. Center; June 1 - Plymouth, Washington County Courthouse. Business Session - June 16, 1987 - CP&L, Southport - 10AM.*

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Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission. P. O. Box 769, Morehead City, N.C. 28557. These written and oral comments must be received no later than June 2, 1987.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS

SECTION .0100 - GENERAL REGULATIONS

.0102 DEFINITIONS

(b)

(1)

(F) Cast Nets.

(11) Toothed Dredge - a device towed by engine power consisting of a frame, tooth bar and catchbag used in oyster, clam or crab fisheries.

(12) Mechanical methods for clamming - includes, but not limited to, toothed dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers and/or deflector plates with or without trawls, and any other method that utilizes mechanical or hydraulic power to harvest clams.

(13) Depuration - mechanical purification or the removal of adulteration from live oysters, clams, and mussels by any artificially controlled means.

Statutory Authority G.S. 113-134; 143B-286.

.0105 LEGAL SIZES AND CREEL LIMITS

(b)

(2) ~~No person shall~~ It shall be unlawful to take, attempt to take, harm, possess, or retain in possession channel bass less than 14 18 inches in length.

(4) The secretary, acting upon the advice of the director, based upon reasonable and prudent management of marine and

estuarine resources, may by proclamation, impose any or all of the following restrictions on the taking of channel bass in addition to those specified in (1) (2) and (3) above:

(A) Specify areas

(B) Specify seasons

(C) Specify quantity

(D) Specify means/method

(E) Specify size.

(c) No person shall keep any channel bass weighing 20 pounds or more of any striped bass taken by the use of nets or seines in New Hanover County. All channel bass weighing 20 pounds or more, and any striped bass by the use of nets or seines in New Hanover County, shall be returned to the water alive.

(g) No person or persons may It shall be unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day. The secretary, acting upon the advice of the director, based upon reasonable and prudent management of marine and estuarine resources, may by proclamation, impose any or all of the following restrictions on the taking of Spanish and/or King Mackerel:

(1) Specify areas

(2) Specify seasons

(3) Specify quantity

(4) Specify means/method

(5) Specify size.

Any proclamation prepared under this authority must be approved by the Marine Fisheries Commission prior to issuance.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .0300 - NET REGULATIONS: GENERAL

.0304 GILL NETS

(4) March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge crossing the Intracoastal Waterway; except no nets or net stakes may be used within 150 yards of Alligator River Bridge at any time.

(5) Marking and identification

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requirements are as follows:

- (a) In coastal fishing waters, unless such net is marked by attaching to it at each end two (2) yellow, floating buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching metal or plastic tags to the buoys. Such identification shall include one of the following:
- (i) owner's N.C. motor boat registration number, or
 - (ii) owner's U.S. vessel documentation name, or
 - (iii) owner's last name and initials.
- (b) In internal coastal fishing waters, a single buoy, yellow in color, of solid foam, or other solid buoyant material no less than five inches in diameter and no less than five inches in length, with identification as described in (a) of this Rule, shall be attached to each end of all other gill nets in attached net sets with more than one net. ~~All other marking buoys or gill nets shall also be of the same material, size and color as herein described.~~

Statutory Authority G.S. 113-134; 113-182; 143B-286.

.0305 TRAWL NETS

- ~~(5) In Croatan Sound from December 1 through March 31;~~

Statutory Authority G.S. 113-134; 113-182; 143B-286.

.0306 PURSE SEINES AND NETS

- (b) It shall be unlawful to take or attempt to take menhaden or Atlantic thread herring by use of a purse seine or to possess menhaden or Atlantic thread herring taken by use of a purse seines except during the open fishing season which shall be from May 14 through January 15 except that the season in Core Sound will be open from April 1 through May 15 for bait fishing only. Menhaden and Atlantic

thread herring may be taken at any time by use of a purse seines from beyond one mile of shore in the Atlantic Ocean and menhaden and Atlantic thread herring taken in that area may be transported to port for processing except as provided in (c) and (d) of this Rule.

Statutory Authority G.S. 113-134; 113-182; 143B-268.

.0308 POUND NETS

- (2) It shall be unlawful for any persons or persons to use a pound ~~or fyke~~ net without registering such net with the North Carolina Division of Marine Fisheries prior to installation which includes setting stakes. Stakes will be considered as part of a set. Such registration will expire 365 days after registration. Failure to re-register each set or the abandonment thereof without removing all stakes shall constitute a violation and be grounds for refusal of other registrations or re-registrations. Failure to use a registered set within sixty days of registration shall constitute a violation and be grounds for refusal of other registrations or re-registrations and for revocation of other registrations.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .0400 - NET REGULATIONS: SPECIFIC

.0404 CURRITUCK SOUND AND ITS TRIBUTARIES

- (5) From October 1 through December 31, no gill net shall be used which has a mesh length less than three and one-half inches not set within 300 yards of the shoreline, except gill nets with a mesh length 5" and greater and attended gill nets as described in (4) above.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .0500 - OTHER FISHING DEVICES

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.0501 TOOTHED DREDGES

(a) No person shall It shall be unlawful to use any toothed oyster or clam dredge weighing more than 100 pounds or between the hours of sunset and sunrise. in any of the coastal fishing waters of the state.

(b) No person shall It shall be unlawful to use or possess on board a vessel any toothed oyster or clam dredge fitted with rings capable of holding additional weights or any dredge so fitted in any manner that it is capable of being easily modified to increase the weight of the dredge.

(c) No person shall use any oyster or clam dredge:

(1) In Pamlico Sound, within the area bounded by a line beginning at a point on the north side of Swash Inlet $34^{\circ} 58' 50''$ N $76^{\circ} 09' 13''$ W; thence 292° (M) 5,400 yards to a point 400 yards in a northeast direction from Beacon E1 4 sec $5' 34' 59' 32''$ N $76^{\circ} 12' 20''$ W; thence 140° (M) through Beacon E1 4 sec 14 ft. "3" to Beacon E1 R 4 sec 14 ft. "2"; thence 34° (M) to Beacon E1 4 sec 14 ft. "III"; thence 42° (M) 6.6 miles to a point in the mouth of Wallace channel $35^{\circ} 07' 04''$ N $76^{\circ} 06' 53''$ W; thence 761 (M) 4.05 miles to Beacon E1 4 sec 14 ft. (known as Nine Feet Shoal Beacon); thence 128° (M) 3.2 miles to Ocracoke Lighthouse; thence southwest with the beach to the point of beginning;

(2) In Gore Sound and its tributaries, southwest of a line beginning at a point on the north side of Swash Inlet $34^{\circ} 58' 50''$ N $76^{\circ} 09' 13''$ W, and running 292° (M) to a point off Hog Island Reef $35^{\circ} 00' 06''$ N $76^{\circ} 14' 52''$ W, except that regular oyster dredges may be used to take clams in accordance with 15 NCAC 3B .0901 (b);

(3) On any posted bottoms upon which oysters or shells have been planted by the state, unless such bottoms have been opened to the public and dredging permitted;

(4) In Currituck County;

(5) In any of the following areas and their tributaries; Back Bay at Hog Island, North Bay, the Straits; Back Sound, North River, Newport River, Bogue Sound, White Oak River, New River, Lockwoods Felly River, Shallotte River, and Saucepan Creek (Brunswick county) except on private bottom by permit;

(6) In primary nursery areas as described in 15 NCAC 3B .1405.

(c) It shall be unlawful to use more than one toothed dredge per vessel to take oysters or crabs.

(d) Stick rakes shall be considered dredges when towed by engine power; however, such rakes may be used in the prohibited areas listed in Subsection (c) (5) of this Rule provided;

(1) The area has been designated for its use under the provisions of 15 NCAC 3B .0901 (b); and

(2) That such rakes are used to take clams only; and

(3) No more than one rake is used per boat; and

(4) That such rakes do not exceed 15 inches in width.

(e) The secretary acting upon the advice of the director may prohibit the use of any oyster or clam dredge within the following described areas or any portion thereof based upon the need to protect and conserve the fishery resources in such areas:

(d) It shall be unlawful to use a toothed dredge to take oysters:

(1) In Pamlico Sound, within the area bounded by a line beginning at a point on the north side of Swash Inlet $34^{\circ} 58' 50''$ N $76^{\circ} 09' 13''$ W; thence running 272° (M) 5,420 yards to a point in Wainwright Channel $34^{\circ} 59' 30''$ N $76^{\circ} 12' 22''$ W immediately east of the northern tip of Wainwright Island; thence 019° (M) 2,000 yards to red 4 second interval flashing beacon "2CS" $35^{\circ} 00' 16''$ N $76^{\circ} 12' 12''$ W; thence 033° (M) 2,900 yards to 4 second interval flashing beacon "HL" $35^{\circ} 01' 35''$ N $76^{\circ} 11' 27''$ W; thence 043° (M) 14,450

yards to a point in Pamlico Sound $35^{\circ} 07' 06''$ N - $76^{\circ} 06' 54''$ W; from which point green 4 second interval flashing beacon "3" on Royal Shoal bears 005° (M) 6,000 yards; green 6 second interval flashing beacon "5" on Royal Shoal bears 325° (M) 6,220 yards; and a yellow 6 second interval flashing beacon on Royal Shoal bears 257° (M) 3,000 yards; thence 078° (M) 7,800 yards to green 2.5 second interval flashing beacon "9" $35^{\circ} 08' 26''$ N - $76^{\circ} 02' 30''$ W in Nine Foot Shoal Channel; thence 067° (M) 3,640 yards to red 4 second interval flashing beacon "14BF" $35^{\circ} 09' 21''$ N - $76^{\circ} 00' 39''$ W in big Foot Slough Channel; thence 078° (M) 26,260 yards to a quick-flashing beacon $35^{\circ} 14' 00''$ N - $75^{\circ} 45' 50''$ W; southwest of Oliver Reef; thence 033° (M) 6,100 yards to 2.5 second interval flashing beacon "1" $35^{\circ} 16' 46''$ N - $75^{\circ} 44' 16''$ W in Rollinson Channel; thence 079° (M) 13,920 yards to red 4 second interval flashing beacon "2" $35^{\circ} 19' 02''$ N - $75^{\circ} 36' 19''$ W in Cape Channel; thence 139° (M) 8,340 yards to a point on the shoreline of Hatteras Island near Buxton $35^{\circ} 16' 18''$ N - $75^{\circ} 32' 20''$ W; thence southwest with the shoreline of Hatteras Island to a point $35^{\circ} 11' 30''$ N - $75^{\circ} 44' 48''$ W on the southwest end of Hatteras Island; thence 269° (M) 2,380 yards across Hatteras Inlet to a point $35^{\circ} 11' 18''$ N - $75^{\circ} 46' 15''$ W on the northeast end of Ocracoke Island; thence southwest with the shoreline of Ocracoke Island to a point $35^{\circ} 03' 54''$ N - $76^{\circ} 00' 54''$ W on the southwest end of Ocracoke Island; thence 268° (M) 2,220 yards across Ocracoke Inlet to a point $35^{\circ} 03' 42''$ N - $76^{\circ} 02' 15''$ W on the northeast end of Portsmouth Island; thence running southwest with the shoreline of Portsmouth Island and Core Banks to a point on the north side of Swash Inlet

$34^{\circ} 58' 50''$ N - $76^{\circ} 09' 13''$ W, to the point of the beginning;

(2) In Core Sound and its tributaries, southwest of a line beginning at a point on the north side of Swash Inlet $34^{\circ} 58' 50''$ N - $76^{\circ} 09' 13''$ W, and running 292° (M) to a point off Hog Island Reef $35^{\circ} 00' 06''$ N - $76^{\circ} 14' 52''$ W;

(3) On any posted bottoms upon which oysters or shells have been planted by the state, unless such bottoms have been opened to the public and dredging permitted;

(4) In Currituck County;

(5) In any of the following areas and their tributaries: Back Bay at Hog Island, North Bay, the Straits, Back Sound, North River, Newport River, Bogue Sound, White Oak River, New River, Lockwoods Folly River, Shallotte River, and Saucepan Creek (Brunswick County), except on private bottom by permit;

Statutory Authority G.S. 113-134; 113-182; 143B-286.

.0503 LEAVING DEVICES
UNATTENDED

It shall be unlawful for anyone to leave stakes, anchors, nets, pots, buoys, or floating devices in any coastal fishing waters when such devices are not being employed in fishing operations, and none of the above devices may be left in any waters during a time when they could not be legally fished in those waters. Devices used in conjunction with pound, ~~heart~~, fyke and channel net operations which have not been used in fishing operations for 12 consecutive months shall be deemed abandoned and shall be removed by the person or persons responsible for their placement. Any fishing equipment found set in coastal fishing waters in violation of this Section or which contains edible species of fish, unfit for human consumption, may be removed and disposed of at the discretion of the secretary.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

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.0504 EEL: CRAB: FISH: SHRIMP POTS

(c) It shall be unlawful to use pots in internal coastal fishing waters unless each pot is marked by attaching to it a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall always be identified on the attached buoy by using engraved buoys or by metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) owner's N.C. motorboat registration number; or
- (2) owner's U.C. vessel documentation name; or
- (3) owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from (a) (2), (a) (3), and (c) of this Rule. ~~Unmarked pots attached to a pier shall be considered property of the pier owner.~~

- (e) present (d) without changes
- (f) present (e) without changes
- (g) present (f) without changes

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .0700 - SHRIMP AND SHRIMPING

.0701 USE OF NETS IN TAKING SHRIMP IN

(a) It shall be unlawful for any person to take or attempt to take shrimp by any method, other than a ~~cast net~~ and as set out in Paragraph (e) of this Rule, from the coastal fishing waters of North Carolina, between one hour after sunset on any Saturday and one hour before ~~sunset~~ sunrise on the following ~~Sunday~~ Monday, except in the Atlantic Ocean.

(c) ~~No person shall~~ It shall be unlawful for any person to take or attempt to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh size. Chafing gear or additional tailbag material may be used on no more than one-half of the circumference of the tailbag on

the bottom of the outside of the tailbag.

(c) Fixed nets, channel nets hand seines, and cast nets may be used to catch shrimp in open shrimping areas at any time.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .0800 - CRABS

.0801 TAKING OF CRABS

(b) The following acts are prohibited:

(1) taking, buying, selling, or possessing any hard crabs measuring less than five inches from tip of spike to tip of spike except mature female crabs, and "peelers" which may be floated in regular crab floats. ~~Crabs shall be culled and the "peelers" separated from the entire catch before reaching shore or dock, and all remaining crabs less than legal size shall be immediately returned to the coastal fishing waters. Crabs shall be culled where taken and all crabs less than legal size shall be immediately returned to the coastal fishing waters. "Peelers" shall be separated from the entire catch before reaching shore or dock.~~ Tolerance of not more than 10 percent by weight of any portion examined shall be allowed. In determining whether the proportion of undersize crabs exceeds the 10 percent tolerance limit, the secretary and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of crabs being graded, and may require seizure and return to the waters, or other disposition as authorized by law, of the entire quantity being graded, or of any portion thereof, if undersize crabs in excess of the tolerance limit are found.

(4) an individual may take hard crabs through the use of crab pots at any time for personal consumption, provided that not more than one crab pot

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is used and no boat is used to aid in the taking.

- (5) taking crabs by the use of dredges except as follows:

(A) in the following described area of Pamlico Sound, crabs may be taken from January 1 through March 1 with dredges weighing 100 pounds or less. In Pamlico Sound within the area bounded by a line beginning at a point on Sandy Point 35° 37' 35" N - 75° 43' 46" W running 008° 10.1 nautical miles to a point on shore 35° 47' 45" N - 75° 43' 56" W; thence 051° M 1.75 nautical miles to a white daybeacon 35° 49' 03" N - 75° 42' 28" W; thence 098° 7 nautical miles to the Bodie Island Lighthouse; thence 157° M 3.6 nautical miles to the Oregon Inlet Coast Guard Station flasher; thence 182° M 9.7 nautical miles to flasher No. 3 at Chicamacomico Channel 35° 36' 21" N - 75° 30' 00" W; thence 285° M 11.3 nautical miles to the point of beginning.

- (6) taking crabs by the use of trawl nets or dredges between one hour after sunset on any Saturday and one hour before sunset sunrise on the following Sunday Monday, except in the Atlantic Ocean.

- (7) Taking crabs by the use of dredges between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .0900 - CLAMS

.0901 SIZE LIMIT: DAILY (CREEL OR HARVEST) LIMIT: METHOD OF TAKING CLAMS

(a) It shall be unlawful to take, land, or possess aboard a vessel more than 6,250 clams per fishing operation. No person shall be unlawful to take, attempt to take, possess, sell or purchase any clams (except Rangia or freshwater clams) less than one inch thick. Clams will

be culled by the catcher where taken and all clams of less than legal size with their shell, shall be immediately returned to the bottom where taken. Tolerance of not more than 3 percent by count of any catch shall be allowed. In determining whether the proportion of undersize clams exceeds the 3 percent tolerance limit, The secretary and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of clams being graded and may require seizure and return to public bottom or other disposition as authorized by law of the entire quantity being graded or any portion thereof, if undersize clams in excess of the tolerance limit are found. Possession and sale of clams by a clam hatchery and purchase and possession of clams from a clam hatchery shall be exempt from this Rule. A clam hatchery is defined as any operation which obtains clams through the process of artificial spawning and culture methods.

(c)

(2) No person shall It shall be unlawful to take, attempt to take, buy, sell, or possess any clams taken by mechanical methods from public coastal fishing waters except until the secretary, acting upon the advice of the director, based on reasonable and prudent management of marine and estuarine resources, may by proclamation, open the season during the open season which shall be from December 1 through March 31. The secretary acting upon the advice of the director, based on reasonable and prudent management of marine and estuarine resources is further empowered to may impose any or all of the following restrictions:

- (A) specify number of days, and
- (B) specify areas,
- (C) specify time period,
- (D) specify quantity and/or size, and
- (E) specify number of permits to be issued annually.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

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.0905 TAKING OR UNLOADING CLAMS ON SUNDAY OR AT NIGHT

No person shall take or attempt to take any clams on Sunday or between the hours of sunset and sunrise on any day except:

- (1) provided that one hundred clams per person per day, not to exceed two hundred clams per vessel per day, may be taken by hand tongs, hand rakes, or by hand on Sunday; and
- (2) that this Regulation shall not apply to Atlantic Ocean.

(a) It shall be unlawful to take clams from coastal fishing waters on Sunday or between the hours of sunset and sunrise on any day except that 100 clams per person, not to exceed 200 clams per vessel per day, may be taken by hand tongs, hand rakes or by hand on Sunday during the regular clam season.

(b) It shall be unlawful to unload clams from any vessel on Sunday or between sunset and sunrise on any day. Clams taken on Sunday under the provisions of 3B .0905 (a) are exempt from this Subsection.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .1000 - SCALLOPS

.1002 OPEN SEASON (BAY SCALLOPS)

(a) It shall be unlawful to take or attempt to take bay scallops from coastal fishing waters except that until the secretary, acting upon the advice of the director, based on reasonable and prudent management, may by proclamation, open the season for harvest, sale, possession and transport of bay scallops for up to four days in December and between the second Monday of January and the last Friday of May. The secretary, acting upon the advice of the director, based on reasonable and prudent management, may by proclamation, open the bay scallop season from August 1 through September 15 to hand harvest only (by hand, dip nets, scoops, hand tongs and hand rakes). The

secretary is further empowered to impose any or all of the following restrictions:

- (1) specify number of days;
- (2) specify areas;
- (3) specify means and methods which may be employed in the taking;
- (4) specify time period; and
- (5) limit the quantity.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .1100 - OYSTERS

.1101 OPEN SEASON

(a) It shall be unlawful for any person to take, attempt to take, buy, sell, or possess any oysters taken from public coastal fishing waters until the secretary, acting upon the advice of the director based on reasonable and prudent management of marine and estuarine resources, may open the season by proclamation from October November 1 through March 31 March 1 based on reasonable and prudent management of marine and estuarine resources. The secretary, acting upon the advice of the secretary, may close or open any of the various waters to the taking of oysters and may impose any or all of the following restrictions:

- (1) Specify number of days;
- (2) Specify areas;
- (3) Specify means and methods which may be employed in the taking;
- (4) Specify time period;
- (5) Limit the quantity.

(b) It shall be unlawful to take, land, or possess aboard a vessel more than 25 bushels of oysters per person not to exceed 50 bushels.

Statutory Authority G.S. 113-134; 113-182; 113-201; 143B-286.

.1109 TAKING OR UNLOADING OYSTERS ON SUNDAY OR AT NIGHT

(b) It shall be unlawful to unload oysters from any vessel on Sunday or between sunset and sunrise on any day; provided, that whenever any vessel shall have been partially unloaded before sunset, the remainder of said load of cargo may be discharged in the presence of an

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inspector. This Paragraph shall not apply to Brunswick and New Hanover Counties. Oysters taken on Sunday under the provisions of 3B .1109 (a) are exempt from this Subsection.

(c) No person shall unload oysters from any vessel on Sunday in Brunswick and New Hanover Counties. Oysters taken on Sunday under the provisions of 3B .1109 (a) are exempt from this Subsection.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

.1111 TAKING OYSTER: CLAMS AND MUSSELS FROM POLLUTED AREAS

It shall be unlawful for any person to take, attempt to take, possess, sell, or offer for sale, any oysters, clams or mussels taken from areas which have been designated as prohibited (polluted) by proclamation upon notice by the Division of Health Services of the Department of Human Resources that duly adopted criteria for approval shellfish harvest areas have not been met except as provided in 15 NCAC 3B .0903, .0906, .1107 and .1600. The secretary may reopen any such closed area upon notification from the Division of Health Services that duly adopted criteria for approved shellfish harvest areas have been met.

Copies of these proclamations and maps of these areas are available at the Division of Marine Fisheries, 3411 Arendell St., Morehead City, NC 28557, 919-726-7021.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .1400 - NURSERY AREAS

.1404 VIOLATION TO USE SPECIFIC NETS AND DREDGES

It shall be unlawful to use or attempt to use any trawl net, long haul seine, swipe net, dredge or mechanical methods for clams for the purpose of taking any marine fishes in any of the primary nursery areas described in 15 NCAC 3B .1405.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

.1405 DESCRIPTIVE BOUNDARIES

(b)

(1)

(G) Clark Creek, northeast of a line beginning at a point on the north shore 33° 35' 45" N - 75° 51' 30" W; running 158° (M) to a point on the south shore 35° 35' 46" N - 75° 51' 28" W;

(7)

(D) Laurel Creek, east of a line beginning at a point on the north shore 35° 20' 38" N - 76° 13' 21" W; running 170° (M) to a point on the south shore 35° 20' 36" N - 76° 13' 22" W;

(9)

(F) Deep Bay (i) Old Haulover, north of a line beginning at a point on the west shore 35° 23' 09" N - 76° 22' 52" W; running 101° (M) to a point on the east shore 35° 23' 09" N - 76° 22' 46" W;

(ii) Drum Cove (Stinking Creek), south of a line beginning at a point on the west shore 35° 22' 32" N - 76° 24' 44" W; running 122° (M) to a point on the east shore 35° 22' 26" N - 76° 24' 28" W;

(G) Eastern tributaries (Cedar Hammock and Long Creek), east of a line beginning at a point on the north shore 35° 24' 53" N - 76° 23' 12" W; running 206° (M) to a point on the south shore 35° 24' 39" N - 76° 23' 18" W;

(10)

(A) Germantown Bay and its tributaries, northwest northeast of a line beginning at a point on the east northwest shore 35° 25' 24" 06" 50" N - 76° 27' 05" 16" W; running 236° 158° (M) to a point on the west southeast shore 35° 24' 55" 30" N - 76° 27' 20" 11" W;
Swan Creek, southeast of a line beginning at a point on the north shore 35° 24' 30" N - 76° 27' 11" W; running 234°

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(M) to a point on the south shore $35^{\circ} 24' 24''$ N - $76^{\circ} 27' 17''$ W;

(10)

(H) Unnamed tributaries, northwest of a line beginning at a point on the north shore $35^{\circ} 23' 45''$ N - $76^{\circ} 28' 38''$ W; running 231° (M) to a point on the south shore $35^{\circ} 23' 30''$ N - $76^{\circ} 28' 48''$ W;

(11)

Long Creek, north of a line beginning at a point on the west shore $35^{\circ} 22' 26''$ N - $76^{\circ} 29' 00''$ W; running 119° (M) to a point on the east shore $35^{\circ} 22' 21''$ N - $76^{\circ} 28' 49''$ W;

(b) (11) to (b) (12)

(b) (12) to (b) (13)

(b) (13) to (b) (14)

(c)

(4) Battaline and Tooleys Creeks, northwest of a line beginning at a point on the north shore $35^{\circ} 32' 21''$ N - $76^{\circ} 36' 12''$ W; running 226° (M) to a point on the south shore $35^{\circ} 32' 02''$ N - $76^{\circ} 36' 24''$ W;

Statutory Authority G.S. 113-134; 113-182; 143B-286.

.1408 DESCRIPTIVE BOUNDARIES - SPECIAL SECONDARY NURSERY AREAS

(d) Newport River - west of a line beginning at Penn Point $34^{\circ} 45' 44''$ N - $76^{\circ} 43' 35''$ W; thence running 022° (M) to a point on the north shore, $34^{\circ} 46' 47''$ N - $76^{\circ} 43' 15''$ W;

Present (d) becomes (e) without change

Present (e) becomes (f) without change

Present (f) becomes (g) without change

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .1500 - STRIPED BASS

.1502 HOOK-AND-LINE FISHING

(a) It shall be unlawful for any person to possess more than ~~three~~ six striped bass taken by hook-and-line in any one day from coastal waters.

Statutory Authority G.S. 113-134; 113-182; 143B-286.

SECTION .1600 - MECHANICAL DEPURATION OF SHELLFISH

.1601 HARVEST SEASON

It shall be unlawful for any person to take clams, oysters or mussels from the public or private prohibited (polluted) waters of the State for the purpose of mechanical depuration in an approved depuration facility except from April 1 through May 15. For maintenance dredging operations, season may not apply. All harvest and transport activities within the State of North Carolina related to mechanical depuration shall be under the direct supervision of the Division of Marine Fisheries and/or the Division of Health Services of the North Carolina Department of Human Resources.

Statutory Authority G.S. 113-134; 113-182; 113-201.

.1602 HARVEST AREAS: TIMES AND METHODS

The secretary, acting upon the advice of the director, based upon reasonable and prudent management of marine and estuarine resources, may, by proclamation, impose any or all of the following restrictions on the harvest of shellfish for mechanical depuration:

(1) Specify species,

(2) Specify areas:

(a) Harvest will not be allowed in areas opened to the harvest of shell fish within preceding three years.

(b) Harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities.

(3) Specify harvest days,

(4) Specify time period,

(5) Specify quantity and or size,

(6) Specify harvest methods,

(7) Specify record keeping requirements.

Statutory Authority G.S. 113-134; 113-182; 113-201; 143B-286.

.1603 HARVEST PERMITS

Harvest permits:

(1) All persons harvesting clams,

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oysters or mussels from prohibited (polluted) waters for the purpose of mechanical depuration shall first obtain a permit from the Division of Marine Fisheries and Division of Health Services setting forth the method of harvest to be employed.

(2) The permit applicant shall provide the name, address, location and telephone number of the mechanical depuration facility where the shellfish will be mechanically depurated. Only one depuration plant may be designated for each permittee and any change must be reported to the division prior to sale or depuration.

(3) Persons desiring to harvest polluted shellfish for mechanical depuration shall apply for a harvest permit at least 15 days prior to initiation of harvest.

Statutory Authority G.S. 113-134; 113-182; 113-201; 143B-286.

.1604 TRANSPORT

Transport of clams, oysters or mussels for mechanical depuration:

(1) Clams, oysters or mussels harvested from prohibited (polluted) waters for mechanical depuration in an approved depuration facility located within the State of North Carolina shall be transported under the direct supervision of the Division of Marine Fisheries and/or the Division of Health Services of the North Carolina Department of Human Resources.

(2) Clams, oysters or mussels harvested from prohibited (polluted) waters for mechanical depuration in an approved depuration facility outside the State of North Carolina shall be transported in a sealed conveyance which shall not be unsealed within the State of North Carolina except under the direct supervision of the Division of Marine Fisheries or the Division of Health Services of the North Carolina Department of Human Resources.

Statutory Authority G.S. 113-134; 113-182; 113-201; 143B-286.

.1605 MECHANICAL DEPURATION FACILITIES

Mechanical depuration facilities:

(1) Depuration facilities

identified in .1603 (b) located in the State of North Carolina shall be operated in compliance with Commission of Health Services regulations 10 NCAC 10B .1201 through .1213.

(2) Depuration facilities

identified in .1603 (b) located in a State other than North Carolina shall be in compliance with the applicable rules, regulations and laws of the shellfish control agency of that State.

Statutory Authority G.S. 113-134; 113-182; 113-201; 143B-286; 143B-286.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend regulation cited as 15 NCAC 7H .0406.

The proposed effective date of this action is September 1, 1987.

The public hearing will be conducted at 7:00 p.m. on May 19, 1987 at Cape Hatteras School, Buxton, NC.

Comment Procedures: Written comments may be submitted within 30 days prior to hearing to: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0400 - PUBLIC WATER SUPPLIES

.0406 PUBLIC WATER SUPPLY WELL FIELDS

(b)

(1) The project does not use ground absorption sewage disposal systems within the designated boundary of the well field AEC.

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(c)

(1) Cape Hatteras Well Field.

The Department of Human Resources proposed the Cape Hatteras Water Association well field on Hatteras Island in Dare County as an area of environmental concern. The Cape Hatteras Water Association is supplied with raw water from a well field located south of N.C. 12 on Hatteras Island between Frisco and Buxton. The area to be designated is bounded to the north, south, east, and west by a line located 500 feet from the centerline of the well field. The well field consists of 35 wells in line and is approximately 20,000 feet in length in an east-west direction. The average yield per well is 19.8 gpm and the average drawdown is 4.7 feet. The swamp The area of environmental concern is bounded by a line located 1,000 feet from the centerlines of three tracts. The first tract is identified as "well field" on maps entitled "Cape Hatteras Wellfield Area of Environmental Concern" approved by the Coastal Resources Commission and extends approximately 12,000 feet west from Water Association Road. The second tract is coterminous with the first tract, is identified as "future well field" on said maps and extends approximately 8,000 feet to the east of Water Association Road. The third tract is identified as "future well field" on said maps and extends approximately 6,200 feet along the National Park Service boundary east of Water Association Road. The aquifer beneath the tracts serves as the sole source of drinking water for the communities of Avon, Buxton, Frisco, and Hatteras as well as the national seashore recreation area. The wetlands, swales, and surface waters adjacent to the well field provides provide a large source of recharge and are a potential vehicle for contaminants. The

aquifer is composed of thin beds of fine to medium quartz sand and extends from the land surface to a depth of 50 feet. At this point the soil grades vertically into a slit and clay zone which forms an aquiclude to a depth of 145 feet. Part of this area is recognized as a national seashore recreation area. Due to this fact these facts contamination of the water supply could have an adverse effect on people other than the local residents of Hatteras Island. Water-borne disease organisms could be easily transported to other areas of the state or the east coast by tourists who are attracted to the area daily.

Statutory Authority G.S. 113A-107 (a), (b); 113A-113 (b) (3) a.

TITLE 21 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners intends to amend regulation cited as 21 NCAC 32B .0110.

The proposed effective date of this action is September 1, 1987.

The public hearing will be conducted at 3:00 p.m. on May 15, 1987 in the Auditorium, N.C. Medical Society, 222 N. Person St., Raleigh, N.C.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before May 1, 1987, to the following address: Administrative Procedures, N.C. Board of Medical Examiners, Suite 214, 222 North Person Street, Raleigh, N.C. 27601.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0100 - LICENSE BY WRITTEN EXAMINATION

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.0110 DEADLINE

For the applicant to be eligible for the examination, all data must be in the hands of the executive secretary of the board at least 75 days prior to the examination.

An applicant in attendance at a medical school located in North Carolina who may graduate after the 75 day deadline but before the examination date, may satisfy the certification of graduation requirement as follows:

- (1) Not less than 75 days before the date of the examination, the executive secretary must receive a letter from the dean of the medical school of the applicant stating that the applicant is expected to complete all requirements for graduation prior to the date of the examination; and.
- (2) Prior to the date of the examination, the executive secretary must receive a letter from the dean of the medical school stating that the applicant has completed all requirements for, and will receive, the M.D. degree from the medical school.

Statutory Authority G.S. 90-9.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the State Personnel Commission intends to repeal regulation cited as 25 NCAC 1B .0412 and adopt regulations cited as 25 NCAC 1B .0414-.0434.

The proposed effective date of this action is August 1, 1987.

The public hearing will be conducted at 9:00 a.m. on June 30, 1987 at 101 West Peace Street, Raleigh, NC.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling Drake Maynard, APA Coordinator, Office of State Personnel, 116 West Jones Street, Raleigh, NC 27611, (919) 733-7112. Written comments on these

regulations may be sent to Mr. Maynard at the above address. Written and oral (no more than ten minutes) comments on these regulations may be presented at the hearing.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

SECTION .0400 - APPEAL TO COMMISSION

.0412 ATTORNEY FEES (REPEALED)

Statutory Authority G.S. 126-4(11).

.0414 SITUATIONS IN WHICH ATTORNEYS FEES MAY BE AWARDED

Attorney's fees may be awarded by the commission only in the following situations:

- (1) the grievant is reinstated to the same or similar position from either a demotion or a dismissal;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated;
- (3) the grievant is determined, by the commission or by the agency's internal grievance procedure, to have been discriminated against in violation of G.S. 126-16;
- (4) any combination of the above situations.

Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance procedure or in an appeal to the State Personnel Commission.

Statutory Authority G.S. 126-4(11).

.0415 ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A SETTLEMENT

Attorney's fees may be awarded as the result of a settlement in the grievance procedure, either in the agency internal procedure or at the Personnel Commission level, providing such fees are explicitly incorporated as a part of a written settlement agreement signed by both parties. Attorney's fees shall not be awarded as the result of a settlement

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unless such fees are a specific part of the written settlement agreement.

Statutory Authority G.S. 126-4(11).

.0416 PROVISIONS ON AWARDING ATTORNEY'S FEES

(a) Attorney's fees shall not exceed the rate of seventy-five dollars (\$75.00) per hour of attorney time; this rate shall be reviewed periodically by the commission and adjusted as necessary; there shall be no attorney's fees awarded in excess of this hourly rate.

(b) An itemized statement showing how the attorney's time was spent is required in order to make an award of attorney's fees; this statement shall be itemized to at least one-tenth of an hour; attorney's fees shall not, under any circumstances, be awarded without an itemized fee statement.

(c) No attorney's fees shall be awarded for any attorney time spent in agency internal grievance procedures prior to the grievance committee step of such procedure [Note: in the Department of Human Resources internal grievance procedure, this step would be the hearing officer step].

(d) No contingent fee or flat fee arrangements will be honored in awarding attorney's fees; the provisions of these rules shall be followed in awarding attorney's fees regardless of any arrangement or contract between the grievant and attorney.

(e) Attorney's fees are independent of and not related to whatever amount, if any, recovered by the grievant.

(f) Attorney's fees shall be awarded only for work in the above specified levels of agency internal grievance procedures, work before the Office of Administrative Hearings and before the State Personnel Commission or as ordered by a court of competent jurisdiction; no attorney's fees shall be awarded for any attorney time spent in relation to work done before any other State or federal administrative agency, hearing officer, magistrate or judge.

Statutory Authority G.S. 126-4(11).

.0417 LIMITATION ON REPRESENTATION

Representation of clients in this area of administrative law, while important and deserving of due diligence by attorneys, is neither so new nor so complex that the services of more than one attorney per party can ever be justified. The commission shall not award, as a component of any attorney's fee award, compensation for the work of more than one attorney at a time per grievant. However, should more than one attorney be involved in representing a grievant due to the withdrawal or dismissal of a previous attorney, attorney's fees may be awarded to the successor attorney, as well as the initial attorney if otherwise permissible under these rules. However, research or other legal work may be delegated by the attorney to other members of the firm, or to paralegals, to the end that the work may be done more economically. Time billed for work done by paralegals may be paid, provided that such time does not reflect a duplication of effort in work done by the attorney.

Statutory Authority G.S. 126-4(11).

.0418 COSTS AND TRAVEL TIME

(a) The following costs of representing grievants in either the internal agency procedure, before the Office of Administrative Hearings or before the State Personnel Commission shall be reimbursed above and beyond any attorney's fees awarded based on an itemization of attorney's time:

- (1) copying;
- (2) telephone charges;
- (3) transcript costs (or the cost of purchasing copies of tapes of the hearing);
- (4) mailing costs;
- (5) subpoena costs;
- (6) costs of discovery authorized by order of a hearing officer. Such costs shall be reimbursed as part of an attorney's fee award only if incurred at the grievance committee (hearing officer) step of the agency's internal grievance procedure or before the Office of

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Administrative Hearings/State
Personnel Commission.
Reimbursement shall be made
only if the above costs are
completely and specifically
itemized.

(b) Mileage costs shall be
reimbursed only up to a total of 200
miles of inter-city travel, and at the
rate authorized by the State Budget
Office for mileage reimbursement for
state employees in the Wake County
area traveling 75 miles or more.

(c) Attorney's travel time shall be
reimbursed not to exceed a
maximum of four hours. Time
spent at a meeting of the Personnel
Commission waiting to address the
commission shall be reimbursed.
This time shall be reimbursable at
the attorney's normal hourly rate, or
at the rate for non-hearing time,
whichever is lower.

(d) No overnight lodging expenses
shall be reimbursed, except for those
attorneys who are coming to Raleigh
to address the State Personnel
Commission and only if travel from
the attorney's office to Raleigh and
back cannot be accomplished in ten
hours or less, excluding time spent at
the meeting of the Personnel
Commission. No reimbursement
shall be made in any event for meals.
Lodging expenses shall be
reimbursed at the rate authorized for
in-state travel of state employees.

Statutory Authority G.S. 126-4(11).

.0419 DUAL FEE RATES PERMITTED

It is permissible for attorneys
seeking attorney's fees pursuant to
these rules to charge one rate for
hearing (trial) time, and another rate
for work done in the office,
providing that neither rate exceeds
the authorized maximum hourly
rate.

Statutory Authority G.S. 126-4(11).

.0420 APPEAL TO COMMISSION SOLELY TO DETERMINE ATTORNEY'S FEE AWARD

(a) If all matters in controversy
are resolved between the grievant
and the agency except the matter of
whether or how much attorney's fees
shall be awarded, this matter may be
appealed to the Personnel

Commission for the limited purpose
of resolving this dispute.

(b) Such disputes shall be resolved
in the following fashion:

(1) a request for a determination
as to whether or how much
attorney's fees shall be awarded
must be filed with the
Employee Relations Director,
Office of State Personnel, within
30 calendar days of the final
agency decision declining to
recommend the award of
attorney's fees or recommending
an award of attorney's fees with
which the grievant disagrees;

(2) each party shall file a detailed
position paper, outlining its
position on the question with
the Employee Relations
Division Director, Office of
State Personnel within 30
calendar days of notification of
receipt of the request for
determination of attorney's fees
by the Office of State Personnel;

(3) either party or both parties
shall have the opportunity to
file a brief in addition to a
position paper; briefs must be
filed within ten calendar days of
filing a position paper;

(4) either party may request the
opportunity to make oral
arguments on the position
papers and/or briefs before the
Employee Relations Director or
other designated employee of
the Office of State Personnel;
such a request must be filed
with either the position paper or
the brief, whichever is later;

(5) copies of position papers,
briefs and all other documents
must be served upon the
opposing party
contemporaneously with filing
with the Employee Relations
Division;

(6) oral arguments shall be heard
within ten calendar days
following the filing of the
request for such arguments;
these arguments may be made
personally or by telephone
conference call; each party shall
have no more than 30 minutes
to make its argument in chief
and a rebuttal;

(7) the person considering the

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matter shall have 15 calendar days after the oral arguments or the filing of briefs or position papers, whichever is latest, to send out a report to the parties containing a recommendation to the Personnel Commission for a specific amount of attorney's fees to be awarded, including costs; this recommendation shall be specifically supported by reference to these rules and the parties' position papers;

- (8) either party or both parties may request oral arguments before the full State Personnel Commission in accordance with 25 NCAC 1B .0401.
- (9) Failure to serve papers, as in (5) above, upon the other party may be cause to deny a party the opportunity to make presentations before the Employee Relations Director or designated employee.

Statutory Authority G.S. 126-4(11).

.0421 BACK PAY

(a) The Personnel Commission has the authority to award full or partial back pay in all cases in which back pay is a requested or possible remedy.

(b) The Personnel Commission may award full or partial back pay regardless of whether reinstatement is ordered.

(c) Gross back pay shall always be reduced by:

- (1) any interim earnings, except that interim earnings from employment which was approved secondary employment prior to dismissal shall not be set off against gross back pay;
- (2) all applicable state and federal withholding taxes, including social security taxes;
- (3) the employee's regular retirement contribution;
- (4) unemployment insurance.

(d) Back pay shall include payment for all holidays which the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall never be a part of any back pay award.

(e) Shift premium pay shall be a part of a back pay award, if the grievant would have been entitled to such pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.

(f) Employees shall not be entitled to any discretionary pay which may or may not have been awarded to them in the absence of the interruption in employment (for example, merit increments).

(g) Back pay shall include any across the board compensation which would have been included in the grievant's regular salary except for the interruption in employment. This includes one-time "bonuses", across the board legislative increments or across the board legislative pay increases.

(h) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the pro-rated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his longevity date, no adjustment for longevity pay shall be made in the back pay award. The pro-rated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.

(i) Back pay must be applied for on Office of State Personnel form PD 14. Copies of this form are available from the Office of State Personnel, Employee Relations Division.

(j) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available, suitable employment following separation from state government.

Statutory Authority G.S. 126-4(9); 126-37.

.0422 FRONT PAY

Front pay is the payment of an amount to an employee above his/her regular salary, such excess

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amount representing the difference between the employee's salary in his/her current position and a higher salary determined to be appropriate due to a finding of discrimination. Front pay may also result from an order of reinstatement to a position of a particular level, which the agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency is unable to hire, promote or reinstate the employee to a position at the level ordered by the Personnel Commission. Front pay shall terminate upon acceptance or rejection of a position consistent with the order of the commission. Front pay shall be available as a remedy in cases involving hiring, promotion, demotion or dismissal. Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for state and federal withholding taxes and the employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant. Shift premium pay and holiday premium pay shall not be available on front pay. Submission of a form PD 14 is not required for front pay.

Statutory Authority G.S. 126-4(9); 126-37.

.0423 LEAVE

(a) An employee shall be credited on reinstatement with all vacation leave which would have been earned except for the interruption in employment.

(b) An employee shall be credited on reinstatement with all sick leave which would have been earned except for the interruption in employment.

(c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.

(d) Employees reinstated from

dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave which would have been earned except for the dismissal.

Statutory Authority G.S. 126-4(9); 126-37.

.0424 HEALTH INSURANCE

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement. It is the responsibility of the employee to provide proof of insurance expenses incurred during the period of unemployment.

Statutory Authority G.S. 126-4(9); 126-37.

.0425 INTEREST

The state shall not be required to pay interest on any back pay award.

Statutory Authority G.S. 126-4(9); 126-37.

.0426 CERTAIN REMEDIES NOT AVAILABLE

Punitive, exemplary and other such damages are not available as remedies in appeals before the State Personnel Commission.

Statutory Authority G.S. 126-4(9); 126-37.

.0427 VOLUNTARY PROGRAMS OR BENEFITS

Voluntary programs or benefits (such as the 401K program, voluntary health and life insurance programs or deferred compensation) are the choice of the employee and are the employee's responsibility. Retroactive contributions or membership in any such program shall not be part of any remedy awarded by an agency or the State Personnel Commission.

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Statutory Authority G.S. 126-4(9); 126-37.

.0428 REINSTATEMENT

As used in these rules, reinstatement means the return to employment of a dismissed employee, in the same or similar position, at the same pay grade and step which the employee enjoyed prior to dismissal. Reinstatement may also refer to the promotion of a demoted employee to the same pay grade and step as the employee was demoted from.

Statutory Authority G.S. 126-4(9); 126-37.

.0429 RECOMMENDATION OF DISCIPLINARY ACTION

The State Personnel Commission shall have the authority to recommend to the respondent agency that disciplinary action be imposed as a result of any employee's failure to observe state policy and procedures in effecting disciplinary actions and dismissals.

Statutory Authority G.S. 126-4(9); 126-37.

.0430 REMOVAL OF MATERIAL FROM PERSONNEL FILE

The State Personnel Commission shall have the authority to order the removal of any material in a personnel file which it finds to be inaccurate or misleading.

Statutory Authority G.S. 126-4(9); 126-37.

.0431 CAUSES FOR REINSTATEMENT

The State Personnel Commission shall order reinstatement from dismissal or demotion only upon a finding of lack of substantive just cause or discrimination prohibited by N.C. Gen. Stat. 126-16. For the purpose of this rule, failure to give the required number and kind of warnings prior to dismissal for job performance shall constitute a lack of substantive just cause.

Statutory Authority G.S. 126-4(9); 126-37.

.0432 REMEDIES FOR PROCEDURAL

VIOLATIONS

(a) Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to the date the employee is given written notice of applicable appeal rights.

(b) Failure to give specific reasons for dismissal, demotion or suspension without pay shall be deemed a procedural violation. The Personnel Commission, in its discretion, may award back pay and attorney's fees for such a violation or, it may determine that the violation is so severe that it rises to the level to constitute lack of substantive just cause; such a determination shall require reinstatement, back pay and attorney's fees as remedies.

(c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate by the commission in light of the purpose of pre-dismissal conferences. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

Statutory Authority G.S. 126-4(9); 126-37.

.0433 SUSPENSION WITHOUT PAY

The State Personnel Commission shall order back pay in those cases in which it is determined that a suspension without pay lacked substantive just cause or was an act of discrimination prohibited by N.C. 126-16.

Statutory Authority G.S. 126-4(9); 126-37.

.0434 DISCRIMINATION

In those cases in which the Personnel Commission finds an act of discrimination prohibited by G.S. 126-16, G.S. 126-36 or G.S. 126-36.1, the commission may order

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reinstatement, back pay, transfer, promotion or other appropriate remedy. The commission shall also have the authority in such cases to order other corrective remedies to ensure that the same or similar discriminatory acts do not recur.

Statutory Authority G.S. 126-4(9); 126-37.

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel intends to repeal regulation cited as 25 NCAC 1H .0608 and adopt regulations cited as 25 NCAC .0610-0615.

The proposed effective date of this action is August 1, 1987.

The public hearing will be conducted at 9:00 a.m. on June 30, 1987 at 101 West Peace Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27611.

SUBCHAPTER 1H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0608 EMPLOYMENT PREFERENCE FOR VETERANS (REPEALED)

Statutory Authority G.S. 126-4(10).

.0610 POLICY STATEMENT OF VETERANS PREFERENCE IN EMPLOYMENT AND RETENTION

It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this Country in time of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment with every State department, agency and university.

Statutory Authority G.S. 126-4(4); 128-15.

.0611 ELIGIBILITY

Persons eligible for veteran's preference shall have served in the Armed Forces of the United States on active duty, for reasons other than training, during periods of war, and shall have been discharged under other than dishonorable conditions. This particularly includes disabled veterans. Also eligible are spouses of disabled veterans, and the surviving spouse or dependent of a veteran who died on active duty during periods of war either directly or indirectly as a result of such service. Eligibility for veteran's preference shall further extend to veterans who suffer disabling injuries through service-related reasons during peacetime, to the spouses of such veterans, and to the surviving spouse or dependent of a veteran who died through service-related reasons during peacetime.

Statutory Authority G.S. 126-4(10); 128-15.

.0612 PERIODS OF WAR

Periods of war shall include:

- (1) World War I (April 16, 1917 through November 11, 1918);
- (2) World War II (December 7, 1941 through December 31, 1946);
- (3) the Korean conflict (June 27, 1950 through January 31, 1955);
- (4) the period of time between January 31, 1955 and the end of the hostilities in Viet Nam (May 7, 1975);
- (5) any other campaign, expedition or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

Statutory Authority G.S. 126-4(4); 126-4(10); 128-15.

.0613 CLAIMING VETERAN'S PREFERENCE

In order to claim veteran's preference, all eligible persons must complete and sign a State Application for Employment (PD-107), and submit it to the appointing authority upon initial application. Appointing authorities are responsible for reviewing the Military Service portion of the

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PD-107 and verifying eligibility. Appointing authorities may request additional documentation as reasonably necessary to ascertain eligibility. Also, as a prerequisite to further consideration, eligible veterans must meet the minimum education and experience requirements for the position applied for, and must be capable of performing the duties assigned to the position. In evaluating the qualifications of veterans against minimum education and experience requirements, credit shall be given on a year for year, and month for month basis, for all military service training and experience which bears a reasonable, functional relationship to the knowledges, skills and abilities required in the position applied for.

Statutory Authority G.S. 126-4(4); 126-4(10); 128-15.

.0614 APPLICATION OF THE VETERAN'S PREFERENCE

(a) The preference to be accorded eligible veterans shall apply in initial selection and reduction in force situations only.

(b) In initial selection procedures, where numerically scored examinations are used in determining the relative ranking of candidates, 10 points shall be awarded to eligible veterans.

(c) In initial selection, where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the veteran who has met the minimum qualification requirements for the vacancy, and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service.

(d) The amount of additional experience credit to be granted for unrelated military service in individual cases shall be determined as follows: First, determine the amount of related military service possessed by the eligible veteran beyond that required to meet the minimum qualifications. If the total of such experience equals or exceeds

four years, the additional credit for unrelated military service does not apply. If the total of such experience is less than four years, the veteran shall receive direct experience credit for unrelated military service he/she may possess in an amount not to exceed the difference between his/her related military service and the four year maximum credit which may be granted.

Example A : An eligible veteran with two years of related military experience beyond that necessary to qualify under the minimum education and experience requirement for the vacancy applied for, and with six years of unrelated service, will receive a two year experience credit. For selection consideration, this person will be considered to have a total of four years of related experience. [Four yrs. (maximum possible unrelated service credit) less two yrs. (related military service held by the applicant beyond that necessary for minimum qualification) equals two yrs. (amount of the six years unrelated service which can be credited)].

Example B : An eligible veteran has only enough related military service to qualify for the minimum education and experience requirement of the vacancy being applied for, but has two years, three months of unrelated military service. This person will receive a two year, three month experience credit. [Four yrs. (maximum possible unrelated service credit) less zero (related military service held by the applicant beyond that necessary for minimum qualification) equals four yrs. (four yrs. could be credited for unrelated service time, however, the person in this instance can only claim two yrs., three mos., the actual amount of unrelated time served)].

(e) After applying the preference, the qualified veteran shall be hired when his/her overall qualifications are substantially equal to one or more non-veterans in the applicant pool. Substantially equal qualifications occur when the employer cannot make a reasonable determination that the qualifications held by one or more persons are significantly better suited for the

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position than the qualifications held by another person.

(f) In reduction in force situations where seniority or years of service is one of the considerations in retention, the eligible veteran shall be accorded one year of state service for each year or fraction thereof of military service, up to a maximum of five years credit.

Statutory Authority G.S. 126-4(4); 126-4(10); 128-15.

.0615 ALLEGATION OF DENIAL OF VETERAN'S PREFERENCE

Any claim or allegation that veteran's preference has not been accorded to an eligible veteran must be filed with either the Office of State Personnel or the Office of

Administrative Hearings. Such claims must be filed in a manner consistent with the requirements of G.S. 150B-23 and no later than 30 days from the receipt of the notice or decision which the claim is based upon. Such claims shall be heard as contested cases pursuant to G.S. 150B-2(2) and G.S. 150B, Article 3. The State Personnel Commission, may, upon a finding that veteran's preference was denied in violation of these rules, order the hiring or reinstatement of any affected person, as well as any other remedy necessary to correct the violation.

Statutory Authority G.S. 126-4(10); 126-4(11); 126-37; 126-38; 150B-2(2); 150B, Article 3.

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When the text of any adopted rule differs from the text of that rule as proposed, upon request from the adopting agency, the text of the adopted rule will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2A - ORGANIZATION AND PERSONAL CONDUCT

SECTION .0200 - CONDUCT OF EMPLOYEES

.0202 CONDITIONS OF EMPLOYMENT

(5) receives conviction for driving while impaired (DWI). An employee convicted of a first offense of driving while impaired must at least be reprimanded and if this first offense involves any aggravating circumstances, the employee must at least be issued a final written warning. Absent extraordinary circumstances, employees convicted of two or more offenses of driving while impaired within a five year period shall be dismissed. Whenever an employee certified by the Criminal Justice Education Standards Commission is convicted of driving under the influence, the commission will be notified. The Secretary of the Department of Correction will make a recommendation to continue or revoke certification. The commission may approve or reject the secretary's recommendation. Whenever certification is revoked, the employee must be dismissed.

The decision of the commission is final.

(c) Use of Inmate Labor, State Owned Supplies and Equipment

(1) No work will be done in any shop or by any inmate for the private purposes of any employee or any other person except as specifically authorized by law or regulation. Further, no employee or any other person shall derive either direct or indirect benefit from the use of inmate labor.

(2) No employee will consume or use equipment, facilities, or supplies, including scrap material, except as he may be legally entitled to do. All equipment, facilities, and supplies provided by the department will be used according to design and instructions for the safety of inmates, personnel, and other persons. Provided, the transfer and disposition of all surplus state property, including scrap material, shall be conducted in accordance with procedures established by the Department of Administration, Division of Purchase and Contract, codified at 1 NCAC 4G .0100 through 4G .0500. No state-owned property will be transferred or sold without written authorization of the State Purchasing Officer. Food, cleansers, and other supplies will be used according to recipes and instructions.

History Note: Statutory Authority

G.S. 148-3; 148-11; 148-23;

Eff. February 1, 1976;

Amended Eff. May 1, 1987; August 1, 1983.

SUBCHAPTER 2B - INMATE CONDUCT RULES: DISCIPLINE

SECTION .0100 - GOOD TIME AND GAINED TIME

.0103 GAIN TIME

(3) Work Performed During Emergency Conditions. All inmates are eligible for additional sentence reduction credits for work performed

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during emergency conditions. Such conditions may include rain, sleet, snow, or other unusual or abnormal circumstances as determined by the appropriate approving authority.

- (5) Prison Population Reduction. All inmates shall be eligible for additional sentence reduction credits for good conduct during prison population reduction pursuant to G.S. 148-4.1(d).

History Note: Filed as a Temporary Amendment Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987; Statutory Authority G.S. 148-11; 148-13; 15A-1340.7; Eff. February 1, 1976; Amended Eff. May 1, 1987; October 1, 1987; September 1, 1985; April 1, 1985.

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .2000 - G. S. 148-4.1 EARLY PAROLE

.2002 PRISON POPULATION MANAGEMENT

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level, the secretary shall direct the Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose.

(b) In addition, whenever prison population reduction pursuant to G.S. 148-4.1(d) is in effect, the secretary may not accept any prisoners ordered transferred from local confinement facilities under G.S. 148-32.1(b). Further, the state may return any prisoners housed in the state prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the prisoner was transferred.

History Note: Filed as a Temporary Amendment Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987;

Filed as a Temporary Amendment Eff. November 19, 1986, for a Period of 44 Days to Expire on January 1, 1987; Filed as a Temporary Rule Eff. April 22, 1985, for a Period of 71 Days to Expire on July 1, 1985; Statutory Authority G.S. 148-4.1; 148-11; Eff. July 1, 1985; Amended Eff. May 1, 1987; January 1, 1987.

.2003 CRITERIA (REPEALED)
.2004 SCREENING (REPEALED)
.2005 CERTIFICATION (REPEALED)

History Note: Filed as a Temporary Repeal Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987; Filed as a Temporary Amendment Eff. November 16, 1986, for a Period of 44 Days to Expire on January 1, 1987; Filed as a Temporary Rule Eff. April 22, 1985, for a Period of 71 Days to Expire on July 1, 1985; Statutory Authority G.S. 148-4.1; 148-11; Eff. July 1, 1985; Amended Eff. January 1, 1987; Repealed Eff. May 1, 1987.

.2006 PAROLE COMMISSION REVIEW (REPEALED)

History Note: Filed as a Temporary Repeal Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987; Filed as a Temporary Amendment Eff. November 19, 1986, for a Period of 44 Days to Expire on January 1, 1987; Filed as a Temporary Rule Eff. April 22, 1985, for a Period of 71 Days to Expire on July 1, 1985; Statutory Authority G.S. 15A-1380.2; 148-4.1; 148-11; Eff. July 1, 1985; Amended Eff. January 1, 1987; Repealed Eff. May 1, 1987.

CHAPTER 4 - PAROLE COMMISSION

SUBCHAPTER 4C - POLICY: REVIEW AND INVESTIGATION

SECTION .1800 G.S. 148-4.1 EARLY PAROLE

.1801 PURPOSE (REPEALED)

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History Note: Filed as a Temporary Repeal Eff. March 21, 1987, for a Period of 43 days to Expire on May 1, 1987;

Filed as a Temporary Rule Eff. April 22, 1985, for a Period of 71 Days to Expire on July 1, 1985; Statutory Authority G.S. 148-4.1; 148-57; Eff. July 1, 1985; Repealed Eff. May 1, 1987.

.1802 ADMISSION OF INMATES SENTENCED UNDER FAIR SENTENCING ACT (REPEALED)

History Note: Filed as a Temporary Repeal Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987;

Filed as a Temporary Rule Eff. April 22, 1985, for a Period of 71 Days to Expire on July 1, 1985; Statutory Authority G.S. 148-57; Eff. July 1, 1985; Repealed Eff. May 1, 1987.

.1803 PROCEDURE (REPEALED)

.1804 REVIEW BY PAROLE COMMISSION ANALYST (REPEALED)

.1805 PAROLE COMMISSION REVIEW (REPEALED)

History Note: Filed as a Temporary Repeal Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987;

Filed as a Temporary Amendment Eff. November 19, 1986, for a Period of 44 Days to Expire on January 1, 1987;

Filed as a Temporary Rule Eff. April 22, 1985, for a Period of 71 Days to Expire on July 1, 1985; Statutory Authority G.S. 148-4.1; 148-57;

Eff. July 1, 1985; Amended Eff. January 1, 1987; Repealed Eff. May 1, 1987.

.1806 PAROLE CONDITIONS (REPEALED)

History Note: Filed as a Temporary Repeal Eff. March 21, 1987, for a Period of 43 Days to Expire on May 1, 1987; Filed as a Temporary Rule Eff. April 22, 1985, for a Period of

71 Days to Expire on July 1, 1985; Statutory Authority G.S. 15A-1380.2; 148-4.1; 148-57; Eff. July 1, 1985; Repealed Eff. May 1, 1987.

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 6 - INDIVIDUAL INCOME TAX

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .3800 MISCELLANEOUS RULES

.3802 DEDUCTIONS

(w) A person held liable for payment of a penalty equal to the tax withheld or required to have been withheld but not paid by an employer, may not subsequently claim an income tax deduction for payment of the penalty.

History Note: Statutory Authority G.S. 105-147(1); 105-147(7); 105-147(9)a; 105-147(10); 105-147(24); 105-147(28); 105-148(1); 105-148(2); 105-148(8); 105-262; 105-147; Eff. February 1, 1976; Amended Eff. April 1, 1987; February 1, 1987; August 1, 1986; June 1, 1982.

SUBCHAPTER 6C - WITHHOLDING

SECTION .0100 - WITHHOLDING INCOME TAX

.0102 WITHHOLDING FROM WAGES

Employers must withhold North Carolina income tax from the wages paid to their employees according to tables prepared by the North Carolina Department of Revenue or by using an acceptable alternate method and they must pay over the amount withheld to the department. North Carolina does not employ a depository system for income tax withheld. The amount withheld is deemed by law to be held in trust by the employer for the Secretary of Revenue. The tax withheld or required to be withheld is due to be paid at the same time that the withholding tax report is required to be filed. Whenever the Department of Revenue determines that

collection of the tax is in jeopardy, an employer may be required to report and/or pay the tax at any time after payment of the wages from which the tax should be withheld. The manner in which this is required to be done is explained in the booklet, Income Tax Withholding Tables and Instructions for Employers, Form NC-30.

A penalty of 25 percent of the amount due is imposed for failure to withhold the tax, to file the report on time, or to pay the tax when due. Criminal penalties are provided for willful failure to withhold the tax, to file a return, or to pay the tax when due.

Any person required to collect, truthfully account for, and pay over income tax required to be deducted and withheld, who fails to collect and pay over such amount to the Secretary of Revenue shall be personally liable for a penalty equal to the total amount not collected or not accounted for and paid to the Secretary of Revenue. If an employer has failed to collect, or pay over income tax withheld or required to have been withheld, a 100 percent penalty may be asserted against the responsible corporate officers, directors, employees, stockholders, or other such responsible person whenever such taxes cannot be immediately collected from the employer. More than one person may be liable as a person responsible for the payment of withholding taxes; however, the amount of the income tax withheld or required to have been withheld will be collected only once, whether from the employer or one or more responsible persons. The term "responsible persons" includes any person who is in a position to control the finances of the employer or has the authority or ability to determine which obligations should or should not be paid. Responsibility is a matter of status, duty and authority, not knowledge. For the penalty to apply, it is not necessary that the failure to collect and pay the withholding amounts was willful; it is only necessary that the responsible person failed to pay the tax withheld or required to have been withheld to

the Secretary of Revenue regardless of his reasons or the knowledge he had of such failure.

History Note: Statutory Authority
G.S. 105-163.1(4); 105-163.1(5);
105-163.1(6); 105-163.3; 105-163.6;
105-163.18; 105-262; 105-163.1;
105-163.2; 105-163.6;
Eff. February 1, 1986;
Amended Eff. April 1, 1987.

SUBCHAPTER 9G -MOTOR FUELS TAX DIVISION

SECTION .0500 -REFUNDS

.0505 STATIONARY ENGINE MOUNTED ON A LICENSED MOTOR VEHICLE

No refund is due on motor fuels used to operate a stationary engine mounted on a licensed motor vehicle, except concrete mixer vehicles, solid waste compacting vehicles and certain agricultural delivery vehicles as defined by G.S. 105-446.5, if motor fuel is used from the same storage tank mounted on the vehicle for the purpose of operating both the stationary engine and the engine used to propel a licensed motor vehicle over the streets and highways.

History Note: Statutory Authority
G.S. 105-262; 105-446;
105-446.5;
Eff. January 1, 1983;
Amended Eff. May 1, 1987.

.0512 "MUNICIPALITIES" AND "CONTIGUOUS" MUNICIPALITIES

In order to define municipalities and contiguous municipalities, the Motor Fuels Tax Division will follow the Utilities Commission Rule R2-69:

Rule R2-69; Intracity Bus Carriers.

(a) Towns and Municipalities.

Unless and until determined by the commission in particular cases, all towns and municipalities shall for the purpose of the administration of G.S. 62-260 include a zone adjacent thereto as follows:

- (1) a zone with one-fourth mile of the corporate limits if the municipality has a population of 2,500 or less;
- (2) a zone within one-half mile

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- of the corporate limits if the municipality has a population of between 2,500 and 10,000;
- (3) a zone within one mile of the corporate limits if the municipality has a population of between 10,000 and 100,000;
- (4) a zone within two miles of the corporate limits if the municipality has a population of more than 100,000;
- (5) municipalities whose commercial zones join shall be considered as one municipality for the purpose of this Rule.

History Note: Statutory Authority
G.S. 105-262; 105-446.3;
Eff. January 1, 1983;
Amended Eff. May 1, 1987.

SUBCHAPTER 91 - HIGHWAY FUEL USE TAX

SECTION .0200 - NORTH CAROLINA FUEL PURCHASES

.0202 WITHDRAWALS FROM BULKSTORAGE

A person maintaining bulk storage of North Carolina tax paid motor fuel is entitled to credit on the highway fuel use tax report based on the date the fuel is put into the motor vehicle, not on the date of purchase.

An accounting of tax paid motor fuels purchased and used by any person maintaining bulk storage of tax paid motor fuel in North Carolina is required.

History Note: Statutory Authority
G.S. 105-262; 105-449.39;
Eff. January 1, 1983;
Amended Eff. May 1, 1987.

SECTION .0500 - REGISTRATION CARDS AND IDENTIFICATION MARKERS

.0502 REGISTRATION OF HEAVY VEHICLES LICENSED IN NORTH CAROLINA

Motor carriers operating a heavy vehicle that is licensed in North Carolina pay the ten dollar (\$10.00) fuel registration fee at the time the license plate is purchased. The motor carrier must complete a questionnaire from the Motor Fuels Tax Division regarding special fuels. Motor carriers operating all

vehicles wholly within North Carolina are exempted from filing quarterly highway fuel use reports; however, motor carriers and operators of vehicles licensed under the motor vehicle laws for over 6,000 pounds must register with the Motor Fuels Tax Division and file all applicable reports under the Special Fuels Tax Act.

History Note: Statutory Authority
G.S. 20-88.01; 105-262;
105-449.3; 105-449.9; 105-449.32;
105-449.45; 105-449.47; 105-449.48;
105-449.50;
Eff. January 1, 1983;
Amended Eff. May 1, 1987.

.0504 NO VEHICLE REGISTRATION REQUIRED

A motor vehicle not designed for the purpose of pulling a trailer by the manufacturer and not modified to the extent that the vehicle becomes a tractor-type truck for the purpose of pulling a trailer is not required to be registered.

- (1) A person installing a trailer hitch on a pickup truck to pull a mobile home does not have to register the vehicle;
- (2) A person who shortens the bed of a pickup truck to pull a mobile home does have to register the vehicle.

History Note: Statutory Authority
G.S. 105-262; 105-449.47
through 105-449.49;
Eff. January 1, 1983;
Amended Eff. May 1, 1987.

TITLE 19 - DEPARTMENT OF TRANSPORTATION

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 31 - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTIONS

SECTION .0100 - GENERAL PROVISIONS

.0101 LOCATION OF DIVISION OF MOTOR VEHICLES

The School Bus and Traffic Safety section of the North Carolina Division of Motor Vehicles is located at:

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1100 New Bern Avenue
Raleigh, North Carolina
27697

All forms required by these rules and regulations (hereinafter referred to as "regulations") may be obtained at this address.

*History Note: Statutory Authority
G.S. 20-1;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

.0104 DEFINITIONS

As used in these Regulations:

- (1) "Commercial Driver Training School Branch Office" or "Branch" is a training facility operated by a commercial driver training school at a location different than the principal place of business, where the education and training of persons, either practical or theoretical, or both, to operate or drive a motor vehicle is carried on and consideration or tuition is charged therefor.
- (2) "Hearing Officer" means an officer or employee of the division appointed by the commissioner, who has a minimum of five years of experience as a supervisor and thorough knowledge of the laws and regulations governing the division.
- (3) "Representative" means a duly authorized employee of the Division of Motor Vehicles.
- (4) "Restricted Commercial Driver Training School" means a commercial driver training school which is restricted to a curriculum of evaluation for licensed adult drivers only.

*History Note: Statutory Authority
G.S. 20-4.01; 20-320; 20-321;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL DRIVER TRAINING SCHOOLS

.0201 REQUIREMENTS

The division shall not issue a commercial driver training school license to any individual,

partnership, group, association or corporation unless:

- (1) The individual, partnership, group, association or corporation has at least one motor vehicle registered or leased in the name of the school, which vehicle has been inspected by a representative of the division and vehicle insurance certified as required by these Regulations for use by the school for driver training purposes and driver instruction.
- (2) The individual, partnership, group, association, or corporation has at least one person licensed by the division as a commercial driver training instructor for that school.
- (3) Each manager or owner-operator of a commercial driver training school or branch shall:
 - (a) be of good moral character;
 - (b) have at least four years of experience as a licensed operator of a motor vehicle;
 - (c) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application;
 - (d) not have had a revocation or suspension of his operator's or chauffeur's license in the two years immediately preceding the date of application.

*History Note: Statutory Authority
G.S. 20-322;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

.0202 ORIGINAL APPLICATION

Each original application for a commercial driver training school license shall consist of the following:

- (1) Application for license;
- (2) Personal history statement of owner-operator or manager. This information is confidential and for use by the division only;
- (3) Proposed plan of operation;
- (4) Proof of liability insurance;
- (5) Sample copies of contracts;
- (6) A check or money order in the amount of forty dollars (\$40.00). This fee is due for

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- both original and renewal applications for license;
(7) Certificate of assumed name;
(8) Surety Bond.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

.0204 DUPLICATE COPIES

All applications, either original or renewal, for a commercial driver training school or branch shall be completed in duplicate. The original copy of each form shall be submitted to the School Bus and Traffic Safety Section of the Division of Motor Vehicles at the address specified in rule .0101 of this Subchapter. A copy of each form shall be filed at the place of business.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

.0205 CHANGES IN APPLICATION INFORMATION

The division must be notified in writing within 10 days of any changes in the officers, directors, or manager of any school or branch. The division must also be informed within 10 days of the addition or deletion of any motor vehicles, and a supplemental schedule of motor vehicles must be filed. (Supplemental motor vehicle schedules shall be accompanied by a properly executed insurance certificate.) If the school has a change in ownership, the new owner must file an Original Application with the division as described in Rule .0202 and be approved by the division before beginning operation of the school under the new ownership. Failure to inform the division of the required changes shall be grounds for suspension or revocation of the license.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

.0206 LICENSE FEES (REPEALED)

*History Note: Statutory Authority
G.S. 20-324;
Eff. July 2, 1979;
Amended Eff. June 1, 1982.
Repealed Eff. May 1, 1987.*

.0208 SURRENDER OF LICENSES

Any licensed commercial driver training school or branch which ceases to carry on the business of giving instruction for hire in the driving of motor vehicles or which has a change of ownership shall, within five days, surrender its commercial driver training school license and all instructor licenses issued to driver training instructors employed by the school.

*History Note: Statutory Authority
G.S. 20-322 through 20-325;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

SECTION .0300 - SCHOOL LOCATION: PHYSICAL FACILITIES; AND COURSES OF INSTRUCTION

.0304 BRANCHES (REPEALED)

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Repealed Eff. May 1, 1987.*

.0306 INSPECTIONS

The division shall make periodic inspections (at least annually) of schools and branches to determine compliance with laws and regulations. The inspection shall be made during regular business hours by authorized representatives of the division. Inspections shall include examination of all school records; contracts; classroom facilities; training devices; instructional materials and instructional methods; vehicles; and any other item required by law or regulation. Each owner, partner, associate, corporate officer, or employee of any commercial driver training school shall cooperate with the division's representative and, upon demand, shall exhibit all records instructional aids and equipment, and any other items which are required for the inspection. Refusal to permit inspections shall be grounds for revocation of the license. Records

shall be retained by the school for a period of three years.

History Note: Statutory Authority G.S. 20-231 through 20-324; Eff. July 2, 1979; Amended Eff. May 1, 1987; June 1, 1982.

.0307 COURSES OF INSTRUCTION

Commercial driver training schools are authorized to teach the following courses:

- (1) For unlicensed persons 18 years of age or older, a course as follows:
 - (a) Classroom Instruction. A minimum of six hours, including (but not limited to) rules of the road and other laws and regulations affecting the operation of motor vehicles, safe driving practices, pedestrian safety, and the general responsibilities of the driver.
 - (b) Behind-the-Wheel Instruction. A minimum of six hours, including instruction and practice in all the basic physical skills necessary for proper control of a motor vehicle in all normal driving situations, such as starting, stopping, steering and turning, controlling the vehicle in traffic, backing, and parking.
 - (c) A person holding a valid learner's permit issued by the Driver License Section of the division shall not be required to take the six hours of classroom instruction set forth in Subparagraph (a) of this Paragraph.
 - (d) A person holding a valid learner's permit or driver's license issued by the Driver License Section of the division may contract for any portion of the six-hour behind-the-wheel instruction.
- (2) For licensed persons a course for purposes of driver improvement, such as improving their knowledge and skill in the operation of a motor vehicle.
- (3) For unlicensed persons under the age of 18 years, a course which must be approved by the commission and the State

Superintendent of Public Instruction as follows:

- (a) Classroom Instruction. A minimum of 30 hours, consisting of instruction in:
 - (i) highway transportation: its social and economic influence upon life in America;
 - (ii) drivers: their physical and mental characteristics and how their capabilities and limitations influence the traffic scene;
 - (iii) the automobile: its construction, maintenance, and safe operation;
 - (iv) traffic law and enforcement: laws of nature and man-made laws; and their relationship to traffic safety;
 - (v) pedestrians and bicycles: their influence upon the traffic scene; and
 - (vi) engineering: its influence upon automobiles, highways, traffic controls, and people;
 - (vii) driving while impaired: six (6) hours of instruction on the effects of drinking upon driving and upon accident and death rates; and
 - (viii) rights and privileges of handicapped persons; their rights to use flags, placards, cars, license plates, and parking places.
- (b) Behind-the-Wheel-Instruction. A minimum of six hours, actually under the wheel, including:
 - (i) familiarization with the automobile; the use of its controls; and the development of skills essential to safe operation in traffic; and
 - (ii) driving in traffic with the instructor in a dual control car to develop abilities needed to follow the soundest course of action in responding to complex situations.
- (c) Restrictions:
 - (i) Behind-the-Wheel instruction shall be offered to a student only after he has successfully completed the classwork section. If a student has contracted for

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- both classwork and behind-the-wheel training, these may be taught concurrently.
- (ii) No student shall operate a motor vehicle upon any public street or highway unless such student shall have in his immediate possession a valid learner's permit issued by the division.
 - (iii) No more than three hours of behind-the-wheel training shall be given in any one day. A written record indicating the date and time of this training should be kept on file for each student.
- (d) Other requirements:
- (i) Plans for the content of the curriculum, its organization, and presentation shall be submitted on Form SBTS-610 for the approval of the commissioner and the State Superintendent of Public Instruction. This course should meet the minimum requirements of the Driver Education Course (No. 881, see page 16) of the North Carolina Department of Public Instruction. For further information, see "Driver Education, A Manual for Instructors" (State Department Public Instruction, Publication Number 288).
 - (ii) Textbooks for use in the classwork section are to be chosen from those approved by the State Superintendent of Public Instruction.
 - (iii) Instructors must be approved by both the commissioner and the State Superintendent of Public Instruction.
 - (iv) All expenses incurred in offering and teaching these courses shall be paid by the persons enrolled therein or the school offering the course.
 - (v) A student may enroll for either the classroom work or behind-the-wheel instruction, or both. A school may accept certification of satisfactory completion of classroom instruction from any school authorized to offer such a course, provided the certificate (Form SBTS-611A) is signed by the principal of the public school, or the superintendent of the administrative unit of which it is a part, or the executive officer of a non-public secondary school or a commercial driver training school.
 - (vi) Schools offering this course shall issue to their students upon satisfactory completion of either or both parts of the course a certificate furnished by the division (Form SBTS-611). Schools shall be accountable to the division for all certificates issued to them.
 - (vii) The student, upon submitting certification of satisfactory completion of both parts of the driver education course, shall be eligible for licensing as provided by law. Such certification may be from either or both a public or non-public secondary school or a commercial driver training school.
 - (viii) Schools shall submit reports to the division; as may be required by the division, and their books and records shall be open to inspection by division representatives at all reasonable times.
- (4) For licensed persons taking a course offered by a restricted commercial driver training school, the following courses are authorized:
- (a) curriculum for evaluation and improvement for licensed adult drivers only, utilizing over-the-road observation in vehicles not owned by the school or equipment such as driving simulators;
 - (b) professional curricula, including one or more of the following:
 - (i) police pursuit driving;
 - (ii) auto-cross driving;

- (iii) emergency-vehicle driving,
or
- (iv) road and track racing.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
March 1, 1983; February 1, 1982;
June 1, 1982.*

**SECTION .0400 - MOTOR VEHICLES
USED IN INSTRUCTION**

**.0402 REGISTRATION: INSURANCE:
INSPECTION**

(a) Each vehicle used by the school shall be registered as required by Chapter 20 of the General Statutes of North Carolina, and bear a current inspection certificate.

(b) Each vehicle used by the school shall be insured by a company licensed to do business in North Carolina against liability in the amount of at least twenty thousand dollars (\$20,000) because of injury to or destruction of property of others in any one accident, fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident, and one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident. This insurance coverage shall be secured on an annual basis. In the event coverage for any vehicle used for driver instruction or training shall not be renewed, the school shall give written notice to the division at least 10 days prior to the expiration date of the coverage. A certificate of insurance coverage shall be filed by the insurance underwriter with the division. Cancellation shall be accomplished upon 15 days prior written notice to the division by the insurance underwriter.

(c) Each vehicle used by a school shall be listed and inspected in the manner prescribed on Form SBTS-605. In addition, each vehicle shall be inspected and approved by a representative of the division before it is used. Each vehicle shall be inspected and approved by a representative of the division annually and at any other reasonable

time as indicated by the circumstances.

*History Note: Statutory Authority
G.S. 20-321 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

**.0403 EXEMPTION AND SPECIAL
REQUIREMENT**

Restricted commercial driver training schools shall be exempt from the equipment requirements of Rule .0401 of this Section. All vehicles used in the instructional program shall meet the equipment requirements of Chapter 20 of the North Carolina General Statutes.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

**SECTION .0500 - REQUIREMENTS AND
APPLICATIONS FOR DRIVER
TRAINING INSTRUCTOR**

.0501 REQUIREMENTS

Each instructor of a commercial driver training school or branch shall:

- (1) be of good moral character;
- (2) have at least four years of experience as a licensed operator of a motor vehicle;
- (3) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application;
- (4) not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application;
- (5) have graduated from high school or hold a high school equivalency certificate;
- (6) not have had convictions for moving violations totaling seven or more points in the year preceding the date of application;
- (7) have completed the two-semester-hour, college credit preparatory course for teachers or an equivalent course approved by the commissioner (Form SBTS-613). The college

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credit course is not required for restricted school instructors.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

.0502 ORIGINAL APPLICATION

Each original application for a commercial driver training instructor license shall consist of:

- (1) a combination application and personal history form which must be completed and signed by the applicant;
- (2) a physical examination report completed and signed by a licensed physician;
- (3) satisfactory evidence of high school graduation or equivalency;
- (4) evidence of completion of an approved driver education course;
- (5) a driver license record check for the previous three years if applicant has other than a North Carolina driver license; and
- (6) a check or money order in the amount of eight dollars (\$8.00).

*History Note: Statutory Authority
G.S. 20-232 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

.0503 RENEWAL APPLICATION

(a) Renewal application shall be made by an instructor annually between May 1 and June 10 of each year. All licenses expire on June 30 of each year, and no instructor is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed; and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being required.

(b) At least once every four years, an instructor must take the two-semester-hour college credit course required for the original license; provided, however, that an equivalent number of hours (40) can

be substituted for this course in the following manner:

(1) Twelve (12) hours (three for each full year of the four years) for active and continuing teaching of driver education;

(2) Twenty-eight (28) or more hours for attendance at teacher training workshops and short courses, professional driver training meetings and conferences in the field of driver education which have been approved in advance by the School Bus and Traffic Safety Section. Approval is to be given in the following manner:

(A) Pre-Course (submit for approval):

(i) Name and address of the agency sponsoring the workshop, course or conference;

(ii) Title, dates, and location of the workshop, course, or conference;

(iii) Brief description of the workshop, course, or conference, including the number of hours;

(B) Post-Course (submit for approval and credit):

(i) Proof of attendance, number of contact hours actually attended, and passing grade (if applicable);

(ii) Brief evaluation of the workshop, course, or conference.

(c) An accredited driver education teacher with a current certificate based on the requirements of the Department of Public Instruction is exempted from the requirements of Paragraph (2) of this Rule.

*History Note: Statutory Authority
G.S. 20-322 through 324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

SECTION .0600 - CONTRACTS

.0601 REQUIREMENTS

(4) a statement which reads as follows: "This school is licensed by the State of North Carolina, Division of Motor Vehicles."

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

**SECTION .0700 - BONDING AND
ADVERTISING**

.0701 BONDS

Prior to license approval, a school shall file with the division a continuous "cash" or "surety" bond written by a company licensed to do business in North Carolina in the amount of two thousand five hundred dollars (\$2,500) to indemnify any student against loss or damage arising out of the school's breach of contract between the school and the student (Form SBTS-606).

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
July 1, 1982.*

.0702 CERTIFICATE OF DEPOSIT

With division approval, a certificate of deposit may be executed and filed in lieu of a bond. (Form SBTS-607). The certificate shall be in the principal sum of the bond it stands in lieu of as provided in Rule .0701 of this Section.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

**SECTION .0800 - LICENSE
REVOCATION OR SUSPENSION**

**.0801 GROUNDS FOR REVOCATION
OR SUSPENSION**

The license of any commercial driver training school may be suspended or revoked by the division if the licensee violates any provision of Article 14, Chapter 20 of the North Carolina General Statutes, or if the licensee violates any rule or regulation adopted pursuant to the Article. In addition, a license may be suspended or revoked for any one of the following reasons:

- (1) conviction of the owner,

manager, or any agent or employee of the school of a felony or conviction of any misdemeanor involving moral turpitude;

- (2) knowingly submitting to the division false or misleading information relating to eligibility for a license;
- (3) evidence of substance abuse by the owner, manager, any agent or employee of the school;
- (4) failure or refusal to permit an authorized representative of the division to inspect the school, equipment, records, or motor vehicles used to teach students; or failure or refusal to furnish full information pertaining to any and all requirements set forth in these regulations or in the application for the license;
- (5) failure to maintain adequate standards of instruction, either through lack of qualified instructors or through lack of equipment sufficient to adequately perform the course of instruction;
- (6) employment of any instructor who is not licensed by the division;
- (7) failure of new owner to apply for and be licensed by the division as a school under new ownership and also failure to notify the division within the specified time of any change in management of the school;
- (8) aiding or assisting any person to obtain a driver's license by fraud (revocation in this instance shall be permanent);
- (9) unauthorized possession of application forms or examinations used by the division to determine the qualification of an applicant for a driver's license.

*History Note: Statutory Authority
G.S. 20-325;
Eff. July 2, 1979;
Amended Eff. May 1, 1987.*

**.0803 REVOCATION OR SUSPENSION
PROCEDURE**

If any school or instructor is alleged to be in violation of any provision of Article 14, G.S. Chapter 20 or of any provision of these

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credit course is not required for restricted school instructors.

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

.0502 ORIGINAL APPLICATION

Each original application for a commercial driver training instructor license shall consist of:

- (1) a combination application and personal history form which must be completed and signed by the applicant;
- (2) a physical examination report completed and signed by a licensed physician;
- (3) satisfactory evidence of high school graduation or equivalency;
- (4) evidence of completion of an approved driver education course;
- (5) a driver license record check for the previous three years if applicant has other than a North Carolina driver license; and
- (6) a check or money order in the amount of eight dollars (\$8.00).

*History Note: Statutory Authority
G.S. 20-322 through 20-324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

.0503 RENEWAL APPLICATION

(a) Renewal application shall be made by an instructor annually between May 1 and June 10 of each year. All licenses expire on June 30 of each year, and no instructor is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed; and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being required.

(b) At least once every four years, an instructor must take the two-semester-hour college credit course required for the original license; provided, however, that an equivalent number of hours (40) can

be substituted for this course in the following manner:

- (1) Twelve (12) hours (three for each full year of the four years) for active and continuing teaching of driver education;
- (2) Twenty-eight (28) or more hours for attendance at teacher training workshops and short courses, professional driver training meetings and conferences in the field of driver education which have been approved in advance by the School Bus and Traffic Safety Section. Approval is to be given in the following manner:

(A) Pre-Course (submit for approval):

- (i) Name and address of agency sponsoring the workshop, course or conference;
- (ii) Title, dates, and location of the workshop, course, or conference;
- (iii) Brief description of the workshop, course, or conference, including the number of hours;

(B) Post-Course (submit for approval and credit):

- (i) Proof of attendance, number of contact hours actually attended, and passing grade (if applicable);
- (ii) Brief evaluation of the workshop, course, or conference.

(c) An accredited driver education teacher with a current certificate based on the requirements of the Department of Public Instruction is exempted from the requirements of Paragraph (2) of this Rule.

*History Note: Statutory Authority
G.S. 20-322 through 324;
Eff. July 2, 1979;
Amended Eff. May 1, 1987;
June 1, 1982.*

SECTION .0600 - CONTRACTS

.0601 REQUIREMENTS

(4) a statement which reads as follows: "This school is licensed by the State of North Carolina, Division of Motor Vehicles."

- (7) "Fail to Complete" means any student who does not fully complete the required 160 hours of the lessons or classes required by the division as constituting the full course of study and who cancels by any of the methods prescribed, shall be deemed to have "failed to complete" his or her course.
- (8) "Field Training" means off-road training in and around the truck. Refer to Rule .0306 (2) (b), (c), (e), and (i) of Section .0300.
- (9) "Foreign Commercial Truck Driver Training School" means an enterprise located outside North Carolina which solicits, advertises, or offers truck driver training to residents of North Carolina.
- (10) "General Job or Earnings Claim" means any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.
- (11) "Graduate" means any student who fully completes the required 160 hours of the lessons or classes required by the division and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.
- (12) "Job or Earnings Claim" means any general or specific job or earnings claim.
- (13) "Media Advertisement" means any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are available from a school or distributed by its sales representatives.
- (14) "Most Recent Base Period" means the latest base period.
- (15) "New Course" means any course which has a substantially different course content and occupational objective from any course previously offered by the school and which has been offered for a period of time less than six months.
- (16) "Prospective Student" means any person who seeks to enroll in a course.
- (17) "Recruiter/Salesman" means any person who is employed by a commercial truck driver training school, directly or indirectly, to recruit students for a school. This definition includes persons who are employed by another person who is a direct employee or broker for a school.
- (18) "Specific Job or Earnings Claim" means any express claim or representation concerning the employment opportunities available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.
- (19) "Student" means any person who has signed an enrollment contract with a school and not cancelled that contract before the cooling-off-period, specified in this Rule, has ended.
- (20) "Total Contract Price" means the total price for the enrollment contract, including charges for registration, ancillary services, and any finance charges.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL TRUCK DRIVER TRAINING SCHOOLS

.0201 REQUIREMENTS

The division shall not issue a commercial truck driver training school license to any individual, partnership, group, association, or corporation unless:

- (1) the individual, partnership, group, association, or corporation has at least one motor vehicle registered or leased in the name of the school, which vehicle has been inspected by a representative of the division and vehicle insurance certified as

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required by these Regulations for use by the school for driver training purposes and driver instruction.

- (2) The individual, partnership, group, association, or corporation has at least one person licensed by the division as a commercial truck driver training instructor for that school.
- (3) Each manager or owner-operator of a commercial truck driver training school or branch shall:
 - (a) be of good moral character;
 - (b) be at least 18 years of age;
 - (c) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application; and
 - (d) not have had a revocation or suspension of his operator's or chauffeur's license in the two years immediately preceding the date of application.
- (4) In the case of a foreign commercial truck driver training school, recruiting in North Carolina, the following items are necessary:
 - (a) a copy of the school's license;
 - (b) a course description, including topics taught and the length of the course;
 - (c) a list of equipment available for training;
 - (d) a copy of the contract complete with the fee charged;
 - (e) the names of the persons who represent the school in North Carolina; and
 - (f) a surety bond in the amount of thirty thousand dollars (\$30,000).

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0202 ORIGINAL APPLICATION

Each original application for a commercial truck driver training school license shall consist of the following:

- (1) Application for license,
- (2) Personal history statement

of owner-operator or manager. This information is confidential and for use by the division only,

- (3) Proposed plan of operation,
- (4) Proof of liability insurance,
- (5) Sample copies of contracts,
- (6) A check or money order in the amount of forty dollars (\$40.00). This fee is due for both original and renewal applications for license,
- (7) Certificate of assumed name,
- (8) Surety bond.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0203 RENEWAL APPLICATIONS

Renewal applications shall be made annually between May 1 and June 10 of each year. All licenses expire on June 30 of each year and no school is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed and renewal of such license must be by the same process as required for an entirely new school, with all forms and certifications being required.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0204 DUPLICATE COPIES

All applications, either original or renewal, for a commercial truck driver training school or branch shall be completed in duplicate. The original copy of each form shall be submitted to the Driver License Section of the Division of Motor Vehicles at the following address: 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001. A copy of each form shall be filed at the place of business.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0205 CHANGES IN APPLICATION INFORMATION

The division must be notified in

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writing within 10 days of any changes in the officers, directors, manager, or instructors of any school or branch. The division must also be informed within 10 days of the addition or deletion of any motor vehicles and a supplemental schedule of motor vehicles must be filed. (Supplemental motor vehicle schedules shall be accompanied by a properly executed insurance certificate.) If the school has a change in ownership, the new owner must file an original application with the division as described in Rule .0202 of this Section and be approved by the division before beginning operation of the school under the new ownership. Failure to inform the division of the required changes shall be grounds for suspension or revocation of the license.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0206 BRANCH OFFICES

Any school desiring to open a branch shall make application for such branch on forms furnished by the division in the same manner and to the same extent as for an original license. A commercial truck driver training school may operate a branch office anywhere in the state provided:

- (1) The branch meets all the requirements of the principal place of business.
- (2) The branch is properly identified as a "branch office" by a permanent sign which indicates the location of the principal place of business and which is visible to the general public.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0207 SURRENDER OF LICENSES

Any licensed commercial truck driver training school or branch which ceases to carry on the business of giving instruction in the driving of motor vehicles or which has a change of ownership shall, within five days, surrender its

commercial truck driver training school license and all instructor licenses issued to driver training instructors employed by the school.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0208 LICENSE REQUIRED

No school or branch is permitted to operate without the proper licenses as set forth in these regulations.

*History Note: Statutory Authority
G.S. 20-322;
Eff. May 1, 1987.*

SECTION .0300 - SCHOOL LOCATION: PHYSICAL FACILITIES: AND COURSES OF INSTRUCTION

.0301 GENERAL PROVISIONS

Every school shall maintain a principal place of business open to the public in a permanent-type building. Schools or branches may not be located within or adjacent to a building in which applications for driver licenses are received by the division and no business may be solicited on property occupied by or adjacent to a building in which applications for driver's licenses are received by the division.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0302 OFFICE

The office shall be the principal place of business, in the same location as but physically separated from the classroom facility, and must be sufficient for conducting all business related to the operation of the school including, but not limited to:

- (1) Facilities for conducting personal interviews.
- (2) Storage of all records required for the operation of the school.
- (3) Secretarial or telephone answering service available for a minimum of six hours between 9:00 a.m. and 5:00 p.m. on normal business days.

History Note: Statutory Authority

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*G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0303 CLASSROOM FACILITY

The classroom facility shall meet the following minimum requirements:

- (1) A minimum overall size of not less than 120 square feet (which includes at least 70 square feet for the instructor and his equipment and at least 12 square feet for each student).
- (2) Lighting, heating, and ventilation systems that are in compliance with all state and local laws and ordinances including, but not limited to, zoning, public health, safety, and sanitation.
- (3) Seats and writing surfaces for all students; blackboards visible from all seats; charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; a copy of the Driver's Handbook published by the division for each student; and other textbooks deemed necessary by the instructor.
- (4) Restroom facilities sufficient for the class size must be provided.
- (5) Covered shelter must be provided for students when on the field range to protect them from the weather when not driving.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0304 DISPLAY OF LICENSES

Every school and branch must display in a prominent place in its office licenses issued to it by the division for the school and its instructors.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0305 INSPECTIONS

The division shall make periodic inspections (at least annually) of schools and branches to determine compliance with laws and

regulations. The inspection shall be made during regular business hours by authorized representatives of the division. Inspections shall include examination of all school records, contracts, classroom facilities, training devices, instructional materials and instructional methods, vehicles, and any other item required by law or regulation.

Each owner, partner, associate, corporate officer, or employee of any commercial truck driver training school shall cooperate with the division's representative and, upon demand, shall exhibit all records, instructional aids, equipment, and any other items which are required for the inspection. Refusal to permit inspections shall be grounds for revocation of the license. Records shall be retained by the school for a period of three years.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0306 COURSE OF INSTRUCTION

For licensed persons above the age of 18 for purposes of driving commercial trucks, a course consisting of the following is required:

- (1) Minimum hours of instruction:
 - (a) classroom instruction, including testing - 50 hours
 - (b) field instruction - 50 hours
 - (c) highway behind-the-wheel training - 20 hours
 - (d) observation (highway behind-the-wheel) - 40 hoursTotal - 160 hours
- (2) Content of classroom and behind-the-wheel instruction:
 - (a) laws relating to interstate and intrastate operations;
 - (b) pre-trip inspection;
 - (c) coupling and uncoupling of combination units, if the equipment to be driven includes such units;
 - (d) placing the vehicle in operation;
 - (e) use of the vehicle's controls and emergency equipment;
 - (f) operation in inner-city and interstate highway traffic and passing;
 - (g) turning the vehicle;

- (h) braking and slowing the vehicle by means other than applying the brakes;
 - (i) backing and parking the vehicle;
 - (j) experience operating vehicles with a minimum gross vehicle weight of 49,000 pounds; and
 - (k) completing Driver's Daily Log books.
- (3) Other requirements:
- (a) the 160 hours of instructions required by these rules shall be completed in no less than four calendar weeks;
 - (b) three hours of the 20 hours of behind-the-wheel highway training must be completed by each student between dusk and dawn;
 - (c) one vehicle must be provided for each three students during highway training; provided, four students per vehicle are permitted if the vehicle has been inspected and approved for such use by the division. No more than four students per vehicle and no more than four vehicles per instructor will be allowed for field training; and
 - (d) a Driver's Daily Log must be kept for each student to reflect the 160 hours of instruction.
- (4) Credit for prior instruction or training given by another agency or school may be granted. Such credit may be granted by the school to which the candidate is applying if the prior instruction or training is substantially equivalent to the corresponding part or parts of the course required by North Carolina law and these Rules and Regulations and if such credit is confirmed and authorized as equivalent by the Driver's License Section of the division.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0307 STUDENT REQUIREMENTS

- (a) Students above 18 years of age but less than 21 years of age must be informed by the owner(s) or officers of the school of the age

restrictions and limitations established by the United States Department of Transportation and the Motor Carrier Safety Unit of the Division of Motor Vehicles.

(b) Students must have passed the United States Department of Transportation physical examination.

(c) No student shall operate a truck or tractor-trailer combination upon any public street or highway unless such student shall have in his immediate possession a valid license or learner's permit of the class or type required by General Statute 20-7(a) and his U.S.D.O.T. physical pocket card.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0308 REPORTS TO BE SUBMITTED

Every commercial truck driver training school shall submit to the division the following reports:

- (1) A schedule of classes for each licensing period.
- (2) A class roster as of the first day of class, which roster shall include the name, address, telephone number, and driver's license number of each student.
- (3) A copy of each student's contract(s).
- (4) A list of salesmen/recruiters working for the school (directly or indirectly) at the beginning of the licensing period, with additions or deletions to be filed within 30 days of such change.
- (5) All other reports as required by Article 14, Chapter 20 of the General Statutes.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

**SECTION .0400 - MOTOR VEHICLES
USED IN INSTRUCTION**

.0401 VEHICLE EQUIPMENT

Behind-the-wheel instruction of students in commercial truck driver training schools shall be conducted in motor vehicles owned or leased by the school. All vehicles used for the purpose of demonstration and practice shall:

- (1) Be equipped with:

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- (a) seatbelts as required by Federal and State law;
 - (b) an outside rearview mirror mounted on the right side of the vehicle;
 - (c) a heater, defroster, and speedometer in working condition; and
 - (d) all other equipment required by Chapter 20 of the North Carolina General Statutes.
- (2) Bear conspicuously displayed signs with the words "Student Driver" in letters not less than six inches in height on both the front and rear of the vehicle and also bear conspicuously displayed signs with the name and location of the school in letters not less than one and one-half inches in height on both sides of the power unit and on the back of the trailer.
- (3) No school equipment shall be used to transport property or persons for compensation, other than a properly enrolled student.
- (4) No school equipment shall be operated in another state unless the instructor, student, and equipment are properly licensed to operate in that state.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff May 1, 1987.*

.0402 REGISTRATION: INSURANCE: INSPECTION

- (a) Each vehicle used by the school shall be titled and/or registered as required by Chapter 20 of the General Statutes of North Carolina and bear a current inspection certificate.
- (b) Each vehicle used by the school shall be insured by a company licensed to do business in North Carolina against liability in the amount of at least twenty thousand dollars (\$20,000) because of injury to or destruction of property of others in any one accident, fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident, and one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident. This insurance coverage shall be secured

on an annual basis. In the event coverage for any vehicle used for driver instruction or training shall not be renewed, the school shall give written notice to the division at least 10 days prior to the expiration date of the coverage. A certificate of insurance coverage shall be filed by the insurance underwriter with the division. Cancellation shall be accomplished upon 15 days prior written notice to the division by the insurance underwriter.

(c) Each vehicle used by a school shall be listed and inspected in the manner prescribed on Form 605. In addition, each vehicle shall be inspected and approved by a representative of the division before it is used. Each vehicle shall be inspected and approved by a representative of the division annually and at any other reasonable time as indicated by the circumstances.

(d) Vehicles used for off-road field training must be titled, but are not required to meet North Carolina registration requirements.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0403 SPECIAL REQUIREMENT

At least one of the vehicles used in a commercial truck driver training school shall be a tractor-trailer combination unit and other vehicles may be of the type necessary to carry out the instructional program of the school. All vehicles used in the instructional program shall meet the equipment requirements of Chapter 20 of the North Carolina General Statutes.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

SECTION .0500 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR

.0501 REQUIREMENTS

Each instructor of a commercial truck driver training school or branch shall:

- (1) Be of good moral character.
- (2) Be at least 21 years of age,

have at least 2 years experience operating a Class A vehicle and hold a valid North Carolina Class A license, except as provided in G. S. 20-8(3).

- (3) Not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application.
- (4) Not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application.
- (5) Have graduated from high school or hold a high school equivalency certificate.
- (6) Not have had convictions for moving violations totaling seven or more points in the year preceding the date of application.
- (7) Have evidence of United States Department of Transportation certification and qualify by experience or training, or both, to instruct students in the safe operation of truck-tractor-trailer combination units.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0502 ORIGINAL APPLICATION

Each original application for a commercial truck driver training instructor license shall consist of:

- (1) A combination application and personal history form which must be completed and signed by the applicant.
- (2) A physical examination report completed and signed by a licensed physician.
- (3) Satisfactory evidence of high school graduation or equivalency.
- (4) A driver license record check for the previous three years.
- (5) Consent form for background information.
- (6) A check or money order in the amount of eight dollars (\$8.00).

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0503 RENEWAL APPLICATION

Renewal application shall be made by an instructor annually between May 1 and June 20 of each year. All licenses expire on June 30 of each year and no instructor is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being required.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0504 DUPLICATE COPIES

All applications, either original or renewal, for a commercial truck driver training instructor license shall be completed in duplicate. The original copy of each form shall be submitted to the Driver License Section of the Division of Motor Vehicles. A copy of each form shall be filed at the place of business.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0505 CONFIDENTIALITY

All personal history schedules submitted pursuant to this Subchapter shall be confidential and privileged and the information contained therein shall be used by the division only.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0506 LICENSE FEES

Every application for an original or renewal instructor's license must be accompanied by the fee of eight dollars (\$8.00), which is nonrefundable.

*History Note: Statutory Authority
G.S. 20-324;
Eff. May 1, 1987.*

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.0507 SURRENDER OF LICENSES

Any licensed commercial truck driver training instructor who ceases to give instruction in the driving of motor vehicles for the school for which he is licensed shall surrender his instructor's license within five days. The owner, partner, or chief corporate officer of the school shall be responsible for the return of the instructor's license to the division on termination of employment of any instructor.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0508 LICENSE REQUIRED

No person shall act as an instructor without the proper license as set forth in these regulations.

*History Note: Statutory Authority
G.S. 20-323;
Eff. May 1, 1987.*

SECTION .0600 - CONTRACTS

.0601 REQUIREMENTS

Commercial truck driver training school contracts shall contain, but are not limited to, the following information:

- (1) The agreed total contract charges and full terms of payment thereof.
- (2) The number, nature, time, and extent of lessons contracted for, including:
 - (a) minimum hours of instruction:
 - (i) classroom instruction, including testing - 50 hours.
 - (ii) field instruction - 50 hours.
 - (iii) highway behind-the-wheel training - 20 hours.
 - (iv) observation (highway behind-the-wheel) - 40 hours.Total 160 hours.
 - (b) rate for use of school vehicle for a driver's license road test, if an extra charge is made.
- (3) A statement which reads substantially as follows: "This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein shall bind

neither the school nor the student."

- (4) A statement which reads as follows: "This school is licensed by the State of North Carolina, Division of Motor Vehicles."
- (5) A statement which reads as follows: "If you, as a student, are unable to settle a dispute with the school, please direct your grievances to the North Carolina Division of Motor Vehicles, Driver License Section, 1100 New Bern Avenue, Raleigh, North Carolina 27697-0001."

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0602 PROHIBITED CONTRACT PROVISIONS

Commercial truck driver training school contracts shall not contain the following:

- (1) The statement "no refund" or its equivalent.
- (2) Any statement to the effect that a driver's license is guaranteed or otherwise promised as a result of the driver's license training course.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0603 FILING OF CONTRACT WITH THE DIVISION

The commercial truck driver training school shall file with the division sample copies of all written contracts and agreements at the time of the original application and also at any time thereafter when alterations to contracts are proposed.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0604 CONTRACT PROVISIONS

(a) The school must give the prospective student a completed copy of the enrollment contract at the time the prospective student signs the contract or upon the school's receipt of an enrollment contract completed entirely by mail. The enrollment contract must be written in the same language as the

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oral sales presentation, if any, made by the school and must contain the name and address of the school.

(b) The school must place on the enrollment contract the explanation of the prospective student's cooling-off rights required by this Rule. If the school does not place the notice on the front page of the enrollment contract, the school must place on the front page the following notice: "An explanation of your cancellation and refund rights is on page (page number) of this contract." This notice must be printed in boldface type.

(c) After the school has accepted the enrollment contract of the prospective student, the school must furnish the prospective student with the disclosure of the school's graduation rate and placement rate.

(d) If a school makes a job or earnings claim for a course other than a new course, the school shall disclose the following placement information on the disclosure form entitled, "How Our Students Are Doing." The School shall disclose these figures for individuals who became students during the school's most recent base period:

- (1) the number of students;
- (2) the number and percentage of those students who graduated;
- (3) the number and percentage of those students who remained actively enrolled at the end of that time;
- (4) the number and percentage of graduates who, within four months of leaving the course, obtained employment as truck drivers; and
- (5) the number and percentage of these graduates who refused to provide salary information.

A school may, at its option, include the following statement on the disclosure form: "In evaluating our record, remember not all of our students took this course to get a job as a truck driver. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated."

(e) The disclosure specified by

Paragraph (4) of this Rule must be based on the school's actual knowledge of its students' experiences. Actual knowledge shall be verified, at a minimum, by a list that includes the following information for each student who is counted as obtaining employment in a job for which the course prepared him or her:

- (1) the student's name and address (or telephone number);
- (2) the employer's name;
- (3) the name or title of the job obtained;
- (4) information that indicates that the job was obtained within four months of leaving the course; and
- (5) the student's annual gross salary expressed in increments of two thousand dollars (\$2,000) or an indication of the student's refusal to provide such salary information.

(f) No school shall make any specific job or earnings claim for a new course.

(g) The information required or permitted to be disclosed under Paragraph (4) of this Rule shall be contained in a disclosure form entitled, "How Our Students are doing." The disclosure form shall contain no other information or representations. This form must be mailed to all prospective students who have signed enrollment contracts if a school makes a general job or earnings claim or a specific job or earnings claim.

(h) If a school makes a general job or earnings claim or a specific job or earnings claim that is not substantiated by the disclosure form required by Paragraph (4) of this Rule, the school must not know or have reason to know of facts which would make the claim inapplicable to the school, its enrollees, or a particular geographical area served by the school. A reasonable basis shall consist of a statistically valid and reliable survey which substantiates the claim.

- (1) nothing in Paragraph (4) in this Rule shall be construed as prohibiting schools from making jobs or earnings claims which are substantiated by

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projections from the "Occupational Outlook Handbook" published by the Bureau of Labor Statistics or by similar projections published by other Federal or State agencies. However, when such claims are contained in non-media advertising, the schools must clearly and conspicuously disclose in immediate conjunction with the claim, any limitations, restrictions, or caveats accompanying or made applicable to those projections in their original source.

- (2) a school shall maintain records adequate to disclose the facts upon which each claim covered by this Paragraph is based. Such reports shall be maintained for three years from the date the claim is made and, after compliance with any applicable Federal law concerning the privacy or confidentiality of student records, shall be made available for inspection and copying by DMV officials upon reasonable notice and during regular business hours.

- (i) Home study courses shall be accredited by an accrediting agency approved by the United States Department of Education.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0605 CANCELLATION AND REFUND PROCEDURES

- (a) After the cooling-off period has ended, a student may cancel his or her enrollment in the course by notifying the school. Cancellation by the student is effective on the date the student mails or delivers written notification to the school or on the date that the student gives the school constructive notice of his or her intention to withdraw from the course.

- (b) If a prospective student cancels the enrollment contract during the period described in the notices required, the school must refund all payments made by the prospective student and cancel and return any evidence of indebtedness

within 21 days after receiving any notice of cancellation. If a school fails to comply with the proper enrollment and cooling-off procedure, it shall not retain any money or evidence of indebtedness from a prospective student.

- (c) If a student gives the school written notice of his or her intention to remain enrolled in a course, the time period for measuring constructive notice will begin anew from the date of the written notice. Any prior cancellation by virtue of the student's constructive notice will not be effective if the student provides this written notice of his or her intention to remain enrolled.

- (d) If a student cancels his or her enrollment contract after the cooling-off period, the school shall not receive, demand, or retain more than the one hundred and fifty dollar (\$150.00) registration fee and a pro rata portion of the total contract price. This total pro rata portion shall be calculated by dividing the total number of course hours by the total contract price to obtain an hourly rate. This hourly rate shall be multiplied by the actual number of hours the student attended the school. Refunds must be made within 21 days.

- (e) For courses consisting of a combination of home study lessons and resident training, not more than one hundred dollars (\$100.00) in addition to the registration fee referred to in Subsection (4) shall be retained by the school for those students who fail to enter resident training, unless the school submits affirmative evidence acceptable to the Commissioner of Motor Vehicles disclosing the home study lessons are of such quality and content as to reasonably assure that the students will achieve the stated objective without the resident training portion of the course.

- (f) The school must include in the enrollment contract the following notice. The same method of capitalization and underlying of words uses in the notices set forth below must be used by the school. All subtitles in the notices must be in boldface type. The title of the

notice "CANCELLING THIS CONTRACT" must be in all capitals with boldface type.

(g) If either the school or the instructor fails to comply with the provisions of any contract or agreement between the school and the student, the school shall refund, on a pro rata basis, all monies collected from the student as consideration for the performance of the contract or the agreement.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0606 MISCELLANEOUS

The school may not include in the enrollment contract or any other document a waiver of any of the rights or obligations created by this Section. No oral waiver of any of these rights or obligations shall be effective.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

SECTION .0700 - BONDING AND ADVERTISING

.0701 BONDS

Prior to license approval, a school shall file with the division a continuous "cash" or "surety" bond written by a company licensed to do business in North Carolina to indemnify any student against loss or damage arising out of the school's breach of contract between the school and the student. This bond shall be thirty thousand dollars (\$30,000) for both a commercial truck driver training school and a foreign commercial truck driver training school.

*History Note: Statutory Authority;
G. S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0702 CERTIFICATE OF DEPOSIT

With division approval, a certificate of deposit may be executed and filed in lieu of a bond. The certificate shall be in the principal sum of the bond it stands in lieu of as provided in Rule .0701 of this Section.

*History Note: Statutory Authority
G.S. 20-320 through 20-328;
Eff. May 1, 1987.*

.0703 ADVERTISING

A commercial truck driver training school may advertise by whatever method it sees fit with the following exceptions:

- (1) The address of a telephone-answering service, when it is not the same as the principal place of business of the school, shall not be shown in any medium of advertising or telephone directory. Nor shall any telephone directory listing or yellow page advertisement show a telephone number for a school unless it also shows a valid address for the principal place of business of the school.
- (2) No advertisement shall indicate in any way that a school can or will issue or guarantee the issuance of a driver's license or imply that preferential or advantageous treatment from the division can be obtained.
- (3) A school may state in an advertisement that it has been approved and licensed by the division.
- (4) Commercial truck driver training schools must use the full name, address, and telephone number of their school in all advertising. No advertising shall imply an offer of employment or guarantee employment upon completion.
- (5) If a school makes any job or earnings claims for any course in a media advertisement, the school must include the following disclaimer in this advertisement: "Graduation from this course does not insure that you will get a job. To find out how our graduates have done, send for our job placement record."
- (6) If a school makes any written job or earnings claims about any course, other than a media advertisement, the school must include in that document full disclosures of the school's graduation and placement rates

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required by Rule .0604 of this Section.

- (7) If a school makes any general job or earnings claims for a new course, that school must make the following disclosure in lieu of those required in Paragraphs (4) and (5) of this Rule.

- (a) in media advertisement:

"Since this course is new, we are not able to tell you about the experience of our students in getting jobs."

- (b) all other, non-media advertisements: "Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or State Employment Office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience."

- (8) Commercial truck driver training schools shall not use advertisements or promotional material which is classified, designated, or captioned, "Men wanted to train for...", "Help Wanted", "Employment", "Business Opportunities", or by words or terms of similar import, so as to represent directly or by implication that employment is being offered, nor shall the word "Free" be used in any advertisement.

History Note: Statutory Authority; G.S. 20-320 through 20-328; Eff. May 1, 1987.

SECTION .0800 - LICENSE REVOCATION OR SUSPENSION

.0801 GROUNDS FOR REVOCATION OR SUSPENSION

The license of any commercial truck driver training school may be suspended or revoked by the division

if the licensee violates any provision of Article 14, Chapter 20 of the North Carolina General Statutes, or if the licensee violates any rule or regulation adopted pursuant to that Article. In addition, a license may be suspended or revoked for any one of the following reasons:

- (1) Conviction of the owner, manager, or any agent or employee of the school of a felony or conviction of any misdemeanor involving moral turpitude.
- (2) Knowingly submitting to the division false or misleading information relating to eligibility for a license.
- (3) Evidence of substance abuse by the owner, manager, any agent, or employee of the school.
- (4) Failure or refusal to permit an authorized representative of the division to inspect the school, equipment, records, or motor vehicles used to teach students or failure or refusal to furnish full information pertaining to any and all requirements set forth in these regulations or in the application for the license.
- (5) Failure to maintain adequate standards of instruction, either through lack of qualified instructors or through lack of approved equipment sufficient to adequately perform the course of instruction.
- (6) Employment of any instructor who is not licensed by the division.
- (7) Failure of new owner to apply for and be licensed by the division as a school under new ownership and also failure to notify the division within the specified time of any change in management of the school.
- (8) Aiding or assisting any person to obtain a driver's license by fraud (revocation in this instance shall be permanent).
- (9) Unauthorized possession of application forms or examinations used by the division to determine the qualification of an applicant for a driver's license.
- (10) Failure of the school to

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give the student a copy of his contract and also use by the school of a contract which has not been submitted to and approved by the Division of Motor Vehicles.

*History Note: Statutory Authority
G.S. 20-325;
Eff. May 1, 1987.*

.0802 INSTRUCTOR LICENSE SUSPENSION OR REVOCATION

In addition to the grounds for revocation listed in Rule .0801 of this Section, it is mandatory that the license of any commercial truck driver training instructor be revoked if his driver's license is suspended or revoked or if he accumulates seven or more points, as a result of being convicted of moving violations, in a twelve-month period. Reinstatement of the commercial truck driver training instructor's license shall follow the same procedure as an application for a new license.

*History Note: Statutory Authority
G.S. 20-325;
Eff. May 1, 1987.*

.0803 REVOCATION OR SUSPENSION PROCEDURE

If any school or instructor is alleged to be in violation of any provision of Article 14, Chapter 20 or of any provision of these Regulations, the school or instructor shall be notified by certified or registered mail of the suspension or revocation. The notification shall set forth the details of the alleged violation which formed the basis for the action. The school (through its owner, partner, or corporate officer) or any instructor, may request in writing a "show-cause" hearing. This request must be made within 30 days of receipt of the certified or registered letter. The hearing shall be heard by an officer designated by the commissioner and the school or instructor may be represented by counsel. Upon completion of the hearing, the division shall notify the school or instructor within 30 days of the decision of the hearing officer. This decision may be appealed as provided by G.S. Chapter 150B.

*History Note: Statutory Authority
G.S. 20-325;
Eff. May 1, 1987.*

LIST OF RULES AFFECTED

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EDITION XII, NO. 1

EFFECTIVE: April 1, 1987

AGENCY			ACTION TAKEN
AGRICULTURE			
2	NCAC	9B .0022	Amended
		.0032	Amended
		9C .0601	Adopted
		9K .0206	Amended
		36 .0003	Repealed
		38 .0201	Amended
		.0301	Amended
		.0401	Amended
		43M.0001	Adopted
COMMERCE			
4	NCAC	1F .0306	Temp. Amended Expires 6/27/87
		5D .0106	Adopted
		.0202	Amended
		.0204	Amended
		16D .0302	Amended
CORRECTIONS			
5	NCAC	2F .2301-.2304	Adopted
GOVERNOR'S OFFICE			
9	NCAC	2	Executive Order Number 32 Executive Order Number 33
HUMAN RESOURCES			
10	NCAC	7A .0502	Adopted
		7B .0211	Amended
		8B .0614	Amended
		9A .0006	Amended
		26D .0014	Amended
		41F .0811	Adopted
		42B .1003	Amended
		.1101-.1102	Amended
		.1204	Amended
		.1207	Amended
		42C .1802	Repealed
		.1805	Amended
		.1901	Amended
		.2001-.2002	Amended
		.2006	Amended
		.2207	Amended
		.2209	Amended
		.2212-.2214	Amended
		.2301	Amended
		.2303-.2305	Amended
		.2402	Amended
		.2404-.2405	Amended
		.2501	Amended

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	.2505	Amended
	.2703	Amended
	.2903	Amended
	.3101-.3102	Amended
	.3301	Amended
	.3402	Amended
42D	.1202	Repealed
	.1301	Amended
	.1403-.1404	Amended
	.1503-.1504	Amended
	.1602-.1603	Amended
	.1605	Amended
	.1704-.1705	Amended
46D	.0103	Amended
49D	.0001-.0003	Adopted

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15	NCAC	8B .0303	Amended
		8C .0002	Amended
		8D .0004	Amended
		.0006	Adopted
		10F .0314	Amended
		13N .0100-.0600	Temp. Adopted Expires 6/30/87
		16D .0201	Amended

REVENUE

17	NCAC	6B .3802	Amended
		6C .0102	Amended

TRANSPORTATION

20	NCAC	3 .0703	Amended
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CPA EXAMINERS

21	NCAC	8A .0102	Amended
		8B .0202	Amended
		8C .0805	Amended
		.0910	Amended
		8E .0201-.0202	Amended
		.0204-.0205	Amended
		8F .0302	Amended
		.0305	Adopted
		.0401-.0402	Amended
		8G .0103	Amended
		.0106-.0109	Amended
		.0204	Amended
		.0301-.0306	Amended
		.0407	Amended
		.0408	Adopted
		8L .0016-.0017	Amended
		.0020	Amended
		.0022	Amended
		34 .0126	Adopted
		36 .0211	Amended

REAL ESTATE COMMISSION

21	NCAC	58A .0101	Amended
		.1005	Amended
		.1105	Amended
		.1203	Amended

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	.1205	Amended
	.1306	Amended
	.1314	Amended
	.1318	Amended
58B	.0101	Amended
	.0104	Amended
	.0105	Adopted
	.0201-.0202	Amended

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5	Corrections, Department of
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9	Governor
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25	Personnel, Department of State
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6	Barber Examiners, Board of
8	Certified Public Accountant Examiners
10	Chiropractic Examiners, Board of
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18	Electrical Contractors, Board of Examiners
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
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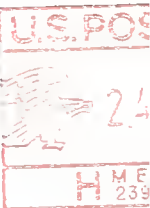
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